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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

DAVINA GIBSON, on behalf of herself
and all others similarly situated,

Plaintiffs,

v.

PLANNED PARENTHOOD
FEDERATION OF AMERICA, INC.,

Defendant.

Case No.:

COMPLAINT FOR DAMAGES

CLASS ACTION

JURY TRIAL DEMANDED

1 Plaintiff Davina Gibson (“Plaintiff”) hereby brings this action, on behalf of
2 herself and all persons and entities similarly situated, against Defendant Planned
3 Parenthood Federation of America, Inc. (“Planned Parenthood” or “Defendant”).
4 Plaintiff alleges, based on information and belief and investigation by counsel except
5 where specifically alleged on the basis of personal knowledge, as follows:

6 **NATURE OF THIS ACTION**

7 1. This is a class action lawsuit for violations of the California Invasion of
8 Privacy Act (“CIPA”), Cal. Penal Code §§ 631 and 632 and violations of the California
9 Confidentiality of Medical Information Act (“CMIA”), Cal. Civ. Code § 56 *et seq.*, as a
10 result of Planned Parenthood’s unlawful disclosure, due to a lack of obtained consent,
11 of its website users’ confidential and private healthcare information and other
12 sensitive personally identifiable information (“PII”), such as name, phone number,
13 physical address, email address, Internet Protocol (“IP”) address and Facebook ID
14 (“FID”). The information taken together that is unlawfully disclosed, due to a total
15 and blatant disregard for obtaining consent, by Planned Parenthood alarmingly
16 reveals to undisclosed third parties the exact identity of its website users and
17 information regarding their inherently private and personal sexual and reproductive
18 healthcare.

19 2. Plaintiff brings this class action against Defendant on behalf of all
20 persons who have accessed and used in the state of California the website
21 www.plannedparenthood.org and its related webpages (the “Website”), which is
22 wholly owned and operated by Defendant.

23 3. While Planned Parenthood has both a Terms of Use and Privacy Policy
24 listed on its Website, neither are enforceable or apply to Plaintiff and class members.
25 Regardless of their enforceability, not only do both fail to provide the required
26 reasonably conspicuous notice to Website users that Planned Parenthood shares their
27 private health information and other PII, but Planned Parenthood does not seek or
28

1 obtain the required consent or authorization from its Website users before disclosing
2 such information to third parties.

3 4. Planned Parenthood intentionally and unlawfully aids, employs, agrees
4 and conspires with various third parties, including Meta Platforms, Inc. (“Meta”)¹,
5 Google LLC (“Google”), Microsoft Corporation (“Microsoft”) and Yahoo Inc. (“Yahoo”)
6 (collectively the “Third Parties”), to intercept communications sent and received by
7 Plaintiff and class members on its Website, including communications containing
8 private and protected sexual and reproductive health information and other highly
9 sensitive PII, all without authorization or consent.

10 5. Planned Parenthood has intentionally and knowingly tapped or made an
11 unauthorized connection with Plaintiff’s and class members’ communications by
12 voluntarily embedding the Third Parties’ tracking code (“Tracking Codes”), on its
13 Website to bolster its benefits in various ways, including by using the data gathered
14 by the Third Parties to build profiles for the purpose of retargeting and future
15 marketing. Relatedly and significantly, the Third Parties do not only intercept the
16 communications to provide analytics services for entities like Planned Parenthood, but
17 they also collect, use and store the communications for their own benefit, including to
18 improve their own personalized content delivery, advertising network machine-
19 learning algorithms and ability to identify and target users. The information obtained
20 by the Third Parties is used to identify specific individuals and their communications
21 on the Website. This helps the Third Parties in many ways, and they seek to obtain as
22 much information as possible on any given Internet user

23 6. Plaintiff brings this action for legal and equitable remedies, including,
24 but not limited to, statutorily provided damages of \$5,000 for each violation of CIPA
25
26

27 ¹ In October 2021, Facebook, Inc. changed its name to Meta Platforms, Inc. Unless
28 otherwise indicated, Facebook, Inc. and Meta Platforms, Inc. are referenced
collectively as “Meta.”

1 and \$1,000 for each violation of CMIA, against Planned Parenthood resulting from
2 these unlawful actions.

3 PARTIES

4 7. Plaintiff Davina Gibson is, and has been at all relevant times, a resident
5 and citizen of the State of California.

6 8. Defendant Planned Parenthood Federation of America, Inc. is a
7 corporation organized under the laws of New York with its headquarters in New York
8 City, New York. Planned Parenthood describes itself as a “trusted health care
9 provider, an informed educator, a passionate advocate, and a global partner helping
10 similar organizations around the world” that “delivers vital reproductive health care,
11 sex education, and information to millions of people worldwide.”²

12 9. Planned Parenthood was established in 1916 and has since grown into a
13 nationwide network of nearly 600 health centers operated by 49 different local
14 affiliates.³ It offers an extensive array of sexual and reproductive health services,
15 including preventative care such as contraception, testing and treatment for sexually
16 transmitted infections, as well as screenings for cervical and other types of cancers.

17 JURISDICTION AND VENUE

18 10. **Jurisdiction:** This Court has jurisdiction over this class action pursuant
19 to 28 U.S.C. § 1332(d). The matter in controversy, exclusive of interest and costs,
20 exceeds the sum or value of \$5,000,000, there are more than 100 putative members of
21 the class defined below and is a class action in which Plaintiff, as well as nearly all
22 members of the class, is a citizen of a state other than the state in which Planned
23 Parenthood is incorporated and has its principal place of business in.

24 11. This Court has personal jurisdiction over Planned Parenthood because it
25 conducts substantial business in California. Planned Parenthood has dozens of

26 ² See Planned Parenthood Website, About Us, *available at* <https://www.plannedparenthood.org/about-us> (last accessed Aug. 1, 2023).

27 ³ See Planned Parenthood Website, Our History, *available at* <https://www.plannedparenthood.org/about-us/who-we-are/our-history> (last accessed Aug. 1, 2023).

1 physical health centers located in California, including over 50 in this District alone.⁴
2 As a result, it regularly targets, markets and sells its services in California and this
3 District. Planned Parenthood has sufficient minimum contacts with this State and
4 sufficiently avails itself to the markets of this State through its services offered and
5 marketing within this State to render the exercise of jurisdiction by this Court
6 permissible. This Court's exercise of personal jurisdiction over Planned Parenthood
7 also does not offend traditional notions of fair play and substantial justice.

8 12. Planned Parenthood has continuous and systematic contact with
9 California not only through its physical locations in the State, but also through its
10 Website and related services and information offered through it, including telehealth
11 appointments it regularly offers, markets and provides to California residents in this
12 District, as the Website is available for use in California and this District. Planned
13 Parenthood also calls, texts and emails Website users, including Plaintiff and other
14 members of the class, regarding their healthcare and otherwise communicates with
15 users via its Website.

16 13. California and this District also have a strong interest in this lawsuit to
17 ensure that the privacy rights of California citizens are protected, as required by CIPA
18 and CMIA. Plaintiff and other members of the class likewise have a strong interest in
19 safeguarding their California privacy rights and will be able to best obtain effective
20 relief in this jurisdiction, which has heard several CIPA and CMIA lawsuits to date
21 and has several currently pending on its docket.

22 14. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2), (c) and (d) because a
23 substantial part of the events, acts or omissions giving rise to Plaintiff's claims herein
24 occurred in this District. Venue is also proper under 18 U.S.C. § 1965(a) because

25
26 ⁴ See Planned Parenthood Northern California Website, *available at* <https://www.plannedparenthood.org/planned-parenthood-northern-california/get-care/our-health-centers>
27 (last accessed Aug. 1, 2023); Planned Parenthood Mar Monte Website, *available at* <https://www.plannedparenthood.org/planned-parenthood-mar-monte/campaigns/health-center-maps>
28 (last accessed Aug. 1, 2023).

Planned Parenthood transacts substantial business in this District. Furthermore, Plaintiff resides in this District, used the Website in this District and received services from Planned Parenthood in this District. Moreover, the majority of the Third Parties are residents of this District.

15. **Divisional Assignment:** This action arises in Alameda County, in that a substantial part of the events which give rise to the claims asserted herein occurred in Alameda County. Pursuant to L.R. 3-2(e), all civil actions that arise in Alameda County shall be assigned to the San Francisco or Oakland Division.

FACTUAL BACKGROUND

I. Planned Parenthood's Online Website

16. Planned Parenthood offers inpatient, outpatient and specialty healthcare nationwide. With over 100 clinics in California alone that serve nearly a million California residents per year, it is one of California's major healthcare providers.⁵ Planned Parenthood offers both in-person and telehealth appointments through its Website.

17. Planned Parenthood offers a full range of medical services but specializes in sexual and reproductive healthcare. The services offered through its Website include:

- i. abortion services and referral;
- ii. birth control;
- iii. emergency contraception (morning-after pill);
- iv. primary care;
- v. HIV services;
- vi. transgender hormone therapy;
- vii. men's health services (sexual dysfunction, cancer screenings, etc.);
- viii. patient sexual and reproductive healthcare education;
- ix. pregnancy testing and services;
- x. STD testing, treatment and vaccines; and
- xi. women's services (pelvic exams, cancer screenings, etc.).

⁵ See Young, Samantha, *If feds strip Planned Parenthood's funding, California would be especially hard hit*, Cal Matters, Mar. 2, 2017, available at <https://calmatters.org/health/2017/03/why-health-care-in-california-could-be-hardest-hit-if-planned-parenthood-loses-federal-funds/> (last accessed Aug 1, 2023).

1 18. The Website is accessible on all web browsers via mobile devices, desktop
2 computers, tablets or similar devices.

3 19. Website users communicate and input their private and personal sexual
4 and reproductive healthcare information and other sensitive PII in various ways via
5 the Website. The healthcare information users disclose on the Website includes their
6 sexual and reproductive healthcare history, the types of services and treatment they
7 research and seek, when they research and schedule an appointment and
8 prescriptions they research, request and are prescribed. The PII users disclose on the
9 Website includes things like name, phone number, physical address, email address,
10 IP address and FID. Taken together, this information reveals an enormous amount of
11 information related to each specific Website user and their identity.

12 20. When using the Website, women are required to communicate and
13 convey information to Planned Parenthood related to their own sexual and
14 reproductive health to receive services, including, but not limited to, information
15 regarding their sexual and reproductive health history, including specific and detailed
16 information regarding their menstrual cycle, abortion history and sexually
17 transmitted infection history, as well as information regarding various sexual and
18 reproductive services and treatment they seek and receive from Planned Parenthood
19 (“Women’s Services”). Women also are required to provide Planned Parenthood with
20 significant PII that identifies themselves, and Planned Parenthood collects PII from
21 women while they use the Website.

22 21. Men also are required to communicate and convey information to
23 Planned Parenthood related to their own sexual and reproductive health to receive
24 services, including, but not limited to, information regarding their sexual and
25 reproductive health history, including specific and detailed information regarding
26 sexual dysfunction, birth control and sexually transmitted infection history, as well as
27 information regarding various sexual and reproductive services and treatment they
28 seek and receive from Planned Parenthood (“Men’s Services”). Men are required to

1 provide Planned Parenthood with significant PII that identifies themselves, and
2 Planned Parenthood collects PII from men while they use the Website.

3 22. The PII provided by Website users and collected by Planned Parenthood
4 along with their healthcare information allows the Third Parties to identify specific
5 users and access their communications on the Website.

6 23. As part of providing sexual and reproductive healthcare, Planned
7 Parenthood also offers prescriptions like birth control⁶, and Planned Parenthood also
8 offers over-the-counter sexual and reproductive healthcare products like condoms.⁷

9 24. Planned Parenthood knowingly and intentionally incorporates a host of
10 tracking technology, including the Tracking Codes, on its Website for marketing,
11 advertising, analytics and other purposes without full and proper disclosure, let alone
12 obtaining consent, to and from its Website users.

13 25. Planned Parenthood knew at the time it incorporated this software into
14 its Website that it would result in the unlawful disclosure and interception of its
15 Website users' communications on its Website by virtue of how these technologies
16 function and the analytics and insight it receives as a result, yet it still chose not to
17 obtain the proper consent or authorization required for disclosure. The consequences
18 and dangers of these technologies is also becoming ubiquitous, and as one of the
19 biggest healthcare providers in California, Planned Parenthood should especially be
20 aware of the dangers posed by embedding the Tracking Codes on its Website.

21 26. The Third Parties allow website developers, like Planned Parenthood, to
22 use the Tracking Codes in a mutually beneficial relationship in which both have full
23 access to the data collected. As part of their symbiotic relationship, the Third Parties
24 also provide Planned Parenthood with tools and analytics to leverage the information

25 _____
26 ⁶ See Birth control now, from your phone to your door, Planned Parenthood, *available*
27 *at* <https://www.plannedparenthood.org/get-care/ppdirect> (last accessed Aug. 1, 2023).

28 ⁷ See How do I get condoms?, Planned Parenthood, *available at* <https://www.plannedparenthood.org/learn/birth-control/condom/how-do-i-get-condoms> (last accessed Aug. 1, 2023).

1 to reach individuals through advertisements. Planned Parenthood was fully aware of
2 the sensitive nature of the data that it unlawfully disclosed and aided the Third
3 Parties to intercept.

4 27. Despite this, Planned Parenthood intentionally chose and continues to
5 incorporate the Third Parties' technologies into its Website to reap their benefit,
6 including by increasing its overall revenue through advertisements and by improving
7 the functionality of its website.

8 28. Planned Parenthood failed to obtain consent or proper authorization to
9 disclose and assist in the interception of its Website users' private communications on
10 its Website, and it did not fully inform or disclose to its Website users that it was
11 sharing their inherently private and personal health information and other sensitive
12 PII.

13 29. Planned Parenthood leaves Website users not only unaware that it
14 reveals their identity and private healthcare information to the Third Parties, but it
15 leaves them further unaware the disclosure of this information allows the Third
16 Parties to benefit off the unlawfully disclosed information.

17 **II. Plaintiff and Class Members Have a Reasonable Expectation of Privacy**
18 **in Their Private and Personal Sexual and Reproductive Health**
Information and Other Sensitive PII

19 30. Plaintiff and Class members have a reasonable expectation of privacy in
20 their personal data and information communicated to Planned Parenthood through
21 its Website, which includes private and personal sexual and reproductive health
22 information and other sensitive PII, often dealing with Women's Services and Men's
23 Services.

24 31. Planned Parenthood is a covered entity under the Health Insurance
25 Portability and Accountability Act, 42 U.S.C. § 1302, *et seq.* ("HIPAA"), which sets
26 minimum federal standards for privacy and security of protected health information
27 ("PHI"). PHI includes Women's Services and Men's Services.
28

1 32. HIPAA defines “protected health information” as “individually
2 identifiable health information” that is “transmitted by electronic media; maintained
3 in electronic media; or transmitted or maintained in any other form or medium.” 45
4 C.F.R. § 160.103.

5 33. Under 45 C.F.R. § 160.103, HIPAA defines “individually identifiable
6 information” as a “subset of health information, including demographic information
7 collected from an individual” that is:

- 8 i. created or received by a healthcare provider;
- 9 ii. relates to the past, present or future physical or mental health
10 or condition of an individual; the provision or health care to an
11 individual; or the past, present or future payment for the
12 provision of health care to an individual; and
- 13 iii. either identifies the individual or there is a reasonable basis to
14 believe the information can be used to identify the individual.

15 34. HIPAA requires Planned Parenthood to:

- 16 i. ensure the confidentiality, integrity and availability of all
17 electronic PHI it creates, receives, maintains or transmits;
- 18 ii. identify and protect against reasonably anticipated threats to
19 the security or integrity of the electronic PHI;
- 20 iii. protect against reasonably anticipated impermissible uses or
21 disclosures of the PHI; and
- 22 iv. ensure compliance by its workforce to satisfy HIPAA’s security
23 requirements.

24 45 C.F.R. § 164.102, *et seq.*

25 35. HIPAA further prohibits a healthcare provider from disclosing PHI to
26 third parties except when an individual has expressly consented in advance to the
27 disclosure or under certain HIPAA-compliant contracts. 45 C.F.R. §§ 164.502 &
28 164.508.

36. Neither Planned Parenthood nor any of the Third Parties obtained
Plaintiff’s and class members’ express consent to share or intercept their PHI, nor
have Planned Parenthood or the Third Parties entered into a HIPAA-compliant
contract that would permit sharing such health information.

37. In order to access care through the Website, Plaintiff and class members must not only disclose PHI, but they must disclose the most sensitive PHI a person has, namely, PHI related to personal sexual and reproductive health. Plaintiff and class members are required to provide this information in order to receive services from Planned Parenthood on its Website, and they provide this protected, personal and extremely private information with the understanding that Planned Parenthood is prohibited by HIPAA from disclosing it.

38. The extremely sensitive and private nature of personal sexual and reproductive health information is evidenced by the fact that there are many laws that give additional special protections related to sexual and reproductive health on top of the protections already given to PHI generally.⁸ As the FTC recently noted, “the exposure of health information and medical conditions, *especially data related to sexual activity or reproductive health*, may subject people to discrimination, stigma, mental anguish, or other serious harms.”⁹

39. Unlike other forms of PMI, the unlawful disclosure of personal sexual and reproductive healthcare may expose people to political, religious and familial controversy,¹⁰ and public or third party knowledge of an individual’s sexual and reproductive history may place them at risk of stigmatization.¹¹ Additionally, poor privacy and confidentiality practices regarding someone’s use of contraceptives and

⁸ See Recommendations Regarding Sensitive Health Information, National Committee on Vital and Health Statistics, Nov. 10, 2010, *available at* <https://ncvhs.hhs.gov/wp-content/uploads/2014/05/101110lt.pdf> (last accessed Aug. 1, 2023).

⁹ See Cohen, Kristin, *Location, health and other sensitive information: FTC committed to fully enforcing the law against illegal use and sharing of highly sensitive data*, Federal Trade Commission, July 11, 2022, *available at* <https://www.ftc.gov/business-guidance/blog/2022/07/location-health-and-other-sensitive-information-ftc-committed-fully-enforcing-law-against-illegal> (emphasis added) (last accessed Aug. 1, 2023).

¹⁰ See Recommendations, *supra* footnote 8; See also Religious Liberty and Access to Reproductive Health Care, American Bar Association, *available at* https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/intersection-of-lgbtq-rights-and-religious-freedom/religious-liberty-and-access-to-reproductive-health-care/ (last accessed Aug. 1, 2023).

¹¹ See Recommendations, *supra* footnote 8.

1 other forms of birth control are believed to especially put at risk adolescents and young
2 adults, including in the healthcare service quality they receive.¹²

3 40. Planned Parenthood's legal obligations as a covered entity under HIPAA,
4 in addition to the express and implied assurances of confidentiality it makes on its
5 Website, create a reasonable expectation in Website users that their communications
6 on the Website, which include their PHI, will remain private and confidential and not
7 be shared with undisclosed third parties, including Meta, Google, Microsoft and
8 Yahoo.

9 **III. Plaintiff and Class Members Did Not Consent to Planned Parenthood's** 10 **Collection and/or Use of Their Data**

11 41. Plaintiff and class members have no idea that the Third Parties, at
12 Planned Parenthood's direction, unlawfully collect, use and store their PHI and other
13 sensitive PII that reveals their identity when they interact with the Website.

14 42. There is no indication, let alone proper and full disclosure, that the
15 Tracking Codes are embedded on the Website to collect users' PHI and other sensitive
16 PII that identifies Website users.

17 43. While Planned Parenthood has both a Terms of Use¹³ and Privacy
18 Policy¹⁴ (collectively the "Policies") listed on its Website, neither are enforceable or
19 apply to Plaintiff and class members. They are both in the form of what is known as a
20 browse-wrap agreement.

21 44. Website users who enter the Website are not made aware of Planned
22 Parenthood's Policies because they are located in small letters at the very bottom of

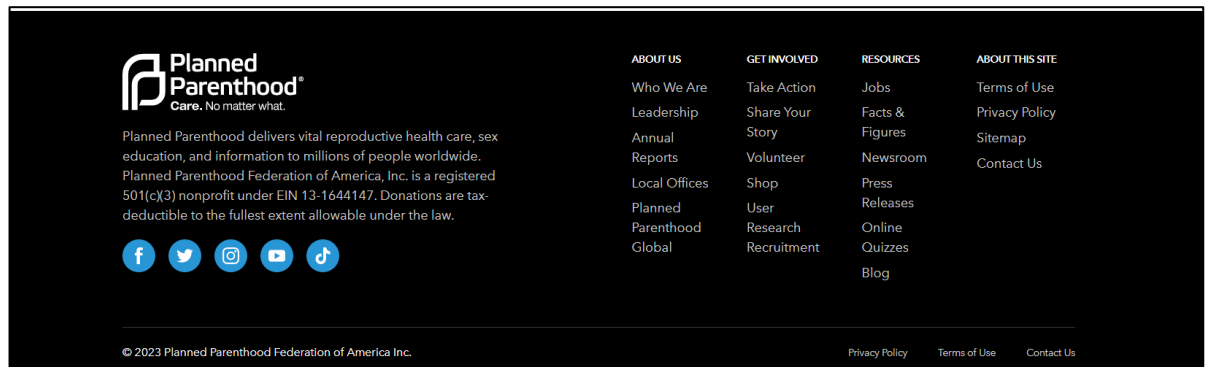
23 ¹² Tchounwou, Paul, *Exploring and Monitoring Privacy, Confidentiality, and Provider*
24 *Bias in Sexual and Reproductive Health Service Provision to Young People: A*
25 *Narrative Review*, International Journal of Environmental Research and Public
26 Health, May 27, 2022, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9180733/> (last accessed Aug. 1, 2023).

27 ¹³ See Planned Parenthood's Terms of Use, available at <https://www.plannedparenthood.org/terms-use> (last accessed Aug. 1, 2023).

28 ¹⁴ See Planned Parenthood's Privacy Policy, last updated June 7, 2021, available at <https://www.plannedparenthood.org/privacy-policy> (last accessed Aug. 1, 2023).

the Website's homepage among many other links. The first screenshot below is a highly zoomed in depiction of where the links for Planned Parenthood's Policies are located at the bottom of the Website's homepage. The second screenshot below is a depiction of the Website's entire homepage, which shows how hidden and buried the Policies are and how much "scrolling" is required by a Website user to finally reach the Policies' links at the bottom of the webpage. As evidenced by the first screenshot, the font for Planned Parenthood's policies is the same white font used throughout much of the Website without any distinguishing features. The size of the font for the links is some of the smallest on the entire page, and there is no indication that you can click on either the Terms of Use or Privacy Policy or that either are hyperlinked. They are not in a different color and not underlined.

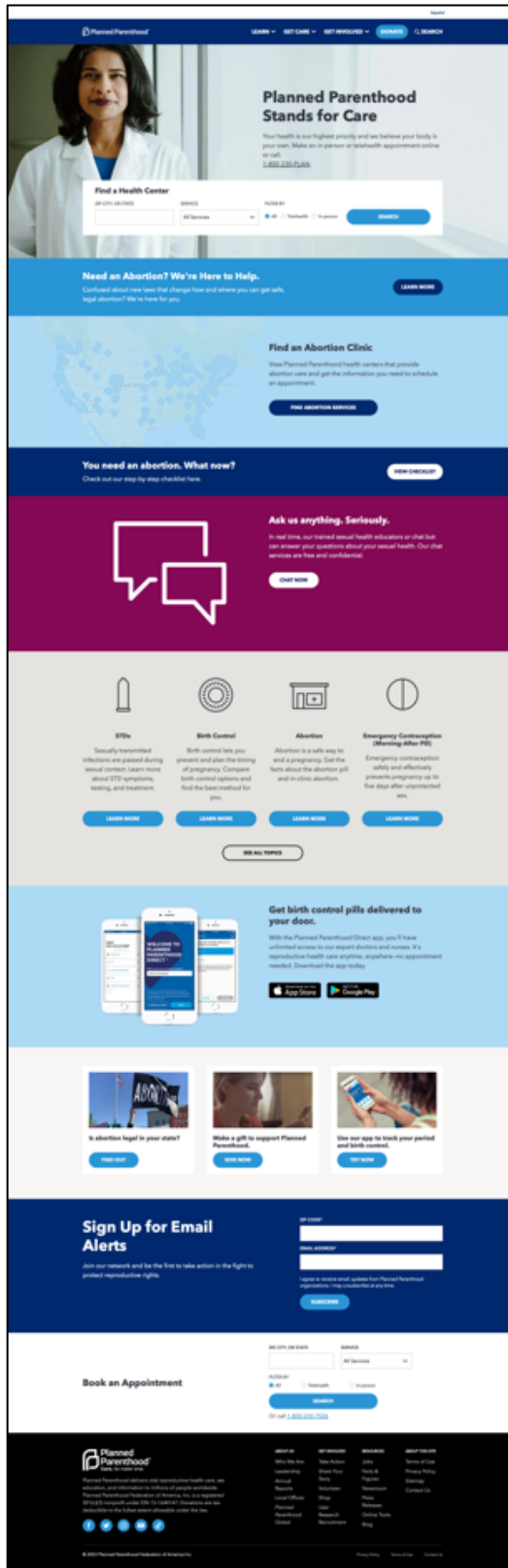
15



16

¹⁵ Screenshot taken on May 18-19, 2023 via Chrome web browser.

¹⁶ Screenshot taken on August 24, 2023 via Chrome web browser.



45. Throughout the entire process of Website users using the Website for healthcare services, including conducting searches for different medical conditions

1 and scheduling appointments, users are never presented with the Website's Terms of
2 Use or Privacy Policy. When searching for medical conditions and scheduling
3 appointments, there is absolutely no need, requirement or reason for a Website user
4 to scroll to the very bottom of the webpage in order to receive services or otherwise use
5 the Website.

6 46. As the Ninth Circuit recently held, for website agreement terms to be
7 held enforceable: 1) they must be "reasonably conspicuous," and 2) users must
8 "manifest unambiguous assent." *Berman v. Freedom Financial Network, LLC*, 30
9 F.4th 849 (9th Cir. 2022). Planned Parenthood's Policies are not enforceable because
10 they fail both requirements.

11 47. First, reasonably conspicuous notice requires notice that is so obvious
12 that there can be no doubt of the user's knowledge of the terms. *See id.* Plaintiff and
13 class members had no reason to scroll to the bottom of the Website when searching for
14 and scheduling medical appointments, and even if they did, there is no indication that
15 the Terms of Use and Privacy Policy are hyperlinked (this only becomes known after
16 a Website user hovers the computer, tablet, phone or similar pointer, clicker or mouse
17 over the words). Second, Plaintiff and class members also never manifested
18 unambiguous assent because it requires a user to unequivocally agree to the policy.
19 *Id.* Not only did Plaintiff never see the Policies, but she was never asked to accept or
20 consent to them, whether when first entering the Website with a pop-up, by checking
21 a consent box, by clicking a button on the Website or in any other manner at any point
22 during the healthcare researching and appointment scheduling process.

23 48. Even if the Terms of Use were to be found enforceable, which Plaintiff
24 denies, Plaintiff and class members do not have reasonably conspicuous notice from
25 the policy that Planned Parenthood shares its Website users' PHI in combination with
26 other PII that reveals their identity and private sexual and reproductive health
27 information. In its Terms of Use, Planned Parenthood has a section titled, "What
28 Information Do We Collect," and the following, which includes all language from this

1 section, is the only language the Terms of Use has on information that Planned
2 Parenthood collects and shares:

3 When using the Online Services you may be asked if you would like to
4 share certain personal health information collected by Apple's HealthKit
5 with Planned Parenthood. By clicking on "SYNC" you are authorizing
Planned Parenthood to collect such information. Sharing this information
is voluntary; you do not have to click "SYNC" in order to use the Service.¹⁷

6 49. The Apple HealthKit is not associated with the healthcare researching
7 and scheduling feature of the Website and has its own separate consent procedure.
8 Therefore, nowhere in the Terms of Use does Planned Parenthood disclose that it is
9 sharing its Website users' PHI in combination with other sensitive PII that reveals
10 their identity and inherently private sexual and reproductive health information
11 when they interact with the Website to research healthcare and schedule
12 appointments. Because of this, Plaintiff and other class members could never, and
13 never did, manifest unambiguous consent to the disclosure of such information.

14 50. Likewise, even if its Privacy Policy were to be found enforceable, which
15 Plaintiff denies, Plaintiff and class members do not have reasonably conspicuous
16 notice from it that Planned Parenthood shares its Website users' PHI in combination
17 with other PII that reveals their identity and private sexual and reproductive health
18 information. The Privacy Policy acknowledges the use of Google trackers and offers a
19 link for a user to opt-out, but it hides significant information related to the Google
20 tracking codes' true use and all of the information it is actually collecting.¹⁸ There is
21 no mention of any of the other Third Parties.¹⁹ While the Privacy Policy acknowledges
22 the possibility of disclosing information to service providers working on its behalf, it
23 explicitly states that it does not apply to information shared by users in connection
24 with healthcare services received online or through in-person visits at Planned
25 Parenthood facilities, as such information is protected by state and federal law.²⁰ Since

26 ¹⁷ See Terms of Use, *supra* footnote 13.

27 ¹⁸ See Privacy Policy, *supra* footnote 14.

28 ¹⁹ *Id.*

²⁰ *Id.*

1 Plaintiff alleges that the information being unlawfully disclosed by Planned
2 Parenthood to the Third Parties constitutes information in connection with healthcare
3 services received online, the Privacy Policy does not provide reasonably conspicuous
4 notice that Planned Parenthood shares its Website users' PHI in combination with
5 other PII that reveals their identity. Consequently, Plaintiff and other class members
6 could never, and never did, manifest unambiguous consent to the disclosure of this
7 information.

8 51. The only other time a Website user is presented with the Terms of Use
9 and Privacy Policy in a different location than at the bottom of the Website depicted
10 in footnotes 15 and 16 is when a Website user tries to donate to Planned Parenthood,
11 as evidenced in the below screenshot. However, under the same analysis as in *Berman*,
12 the Policies are not enforceable against Planned Parenthood donators because the
13 notice is still not reasonably conspicuous and donators cannot, and do not, manifest
14 unambiguous assent to the Policies. While the Policies are noticeably hyperlinked in
15 a different color unlike on the Website's other pages, they are still in some of the
16 smallest font on the webpage, they are not underlined, the notice of the Policies is
17 located under, rather than above, the button a user needs to click to make a donation,
18 the print is faint and set against a background lacking significant contrast and the
19 user is not required to click the hyperlinks or otherwise read the Policies to proceed or
20 otherwise affirmatively indicate that they agree to the Policies.

Planned Parenthood

Protect and restore abortion access.

Planned Parenthood needs you – give now.

From the Supreme Court to statehouses nationwide, the right to control our bodies is under attack like never before. Together, we must protect and restore access to sexual and reproductive health care, including abortion.

Help Planned Parenthood stand up for patients and protect our rights. **Make your tax-deductible gift today so we can continue to protect and provide care, no matter what.**

Give to Planned Parenthood **Specific Giving**

Make a gift and share your impact with your local Planned Parenthood organization and Planned Parenthood Federation of America.

Take future action with a single click. Log in or Sign up for FastAction

Gift Information

☐ One-Time ☒ Monthly

A monthly gift does even more to protect reproductive rights

\$50 \$35 \$25 \$15

\$0.00

☐ I'd like to cover the 3.25% processing fees, making my total gift **\$36.14**, so my gift goes even further to protect reproductive health.

☐ I'd like to make this gift in honor or in memory of someone special

CREDIT CARD PAY WITH BANK ACCOUNT PayPal

Planned Parenthood respects your privacy, and works to ensure your information is kept confidential. Feel free to review our privacy policy and our website's terms of use, and reach out with any questions.

52. Therefore, the Website does not have any enforceable terms of use, user agreement, privacy policy or any other provision that permits the disclosure of its Website users' PHI and other sensitive PII to the Third Parties.

53. While using the Website, Plaintiff and class members had no reason to visit the Third Parties' websites to review their separate terms of use and/or privacy policies because they were unaware that Planned Parenthood shared their PHI and other sensitive PII with the Third Parties. Plaintiff and class members also had no reason to know that the Third Parties were using their private communications for their own analytics and advertising purposes.

54. Notwithstanding its unenforceable disclosures, Planned Parenthood does not have an unlimited right to share Plaintiff's and class members' health data. Planned Parenthood is a covered entity under HIPAA, which protects all electronic PHI Planned Parenthood "creates, receives, maintains, or transmits" in electronic form. *See* 45 C.F.R. § 160.103.

²¹ Screenshot taken on May 18-19, 2023 via Chrome web browser.

1 55. Further, HIPAA does not permit the use or disclosure of PHI to the Third
2 Parties for use in targeted advertising without Plaintiff's and class members' express
3 consent unless Planned Parenthood and the Third Parties entered into a HIPAA-
4 approved contract with Planned Parenthood's Website users. *See* 45 C.F.R. §§ 164.502
5 & 164.508.

6 56. Neither Planned Parenthood nor the Third Parties obtained Plaintiff's
7 and class members' express consent to share their PHI, nor have Planned Parenthood
8 or the Third Parties entered into a HIPAA-compliant contract that would permit such
9 sharing.

10 57. Thus, Planned Parenthood did not obtain consent to collect, use, store
11 and assist in the interception of Plaintiff's and class members' PHI and other sensitive
12 PII that identifies Website users.

13 **IV. Planned Parenthood Shares Information With Third Parties**

14 **a. Meta**

15 58. Planned Parenthood is unlawfully disclosing, due to a lack of obtained
16 consent, to Meta its Website users' private and personal health information and other
17 PII. This information reveals each Website user's specific identity that Meta then uses
18 for advertising, analytics and other purposes.

19 59. Meta is one of the largest advertising companies in the county. Its
20 advertising business began back in 2007 with the creation of "Facebook Ads," which
21 was marketed as a completely new way of advertising online that would allow
22 advertisers to deliver more tailored and relevant ads.²²

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²² Facebook Unveils Facebook Ads, Meta, Nov. 6, 2007, *available at* <https://about.fb.com/news/2007/11/facebook-unveils-facebook-ads/> (last accessed Aug. 1, 2023).

60. Facebook describes itself as a “real identity platform,”²³ meaning users are allowed only one account and must share “the name they go by in everyday life.”²⁴ To that end, when creating an account, users must provide their first and last name, along with their birthday and gender.²⁵

61. In 2021, Meta generated over \$117 billion in revenue,²⁶ and substantially all of Meta’s revenue is generated by selling advertising space.²⁷

62. Meta sells advertising space by highlighting its ability to target users.²⁸ Meta can target users effectively because it has access to user activity both on and off its site.²⁹ This allows Meta to make inferences about users beyond what they explicitly disclose, like their “interests” and “behavior.”³⁰ Meta compiles this information into a generalized dataset called “Core Audiences,” which allows advertisers to reach precise audiences based on specified targeting types.³¹

²³ Sam Schechner and Jeff Horwitz, *How Many Users Does Facebook Have? The Company Struggles to Figure It Out*, Wall. St. J., Oct. 21, 2021, available at <https://www.wsj.com/articles/how-many-users-does-facebook-have-the-company-struggles-to-figure-it-out-11634846701#> (last accessed Aug. 1, 2023).

²⁴ Facebook, Community Standards, Part IV, Integrity And Authenticity, available at <https://www.facebook.com/communitystandards/integrityauthenticity> (last accessed Aug. 1, 2023).

²⁵ Facebook, Sign Up, available at <https://www.facebook.com> (last accessed Aug. 1, 2023).

²⁶ Facebook, Meta Annual Report 2021, available at https://s21.q4cdn.com/399680738/files/doc_financials/annual_reports/2023/2021-Annual-Report.pdf (last accessed Aug. 1, 2023).

²⁷ *See id.*

²⁸ Why advertise On Facebook, Instagram And Other Meta technologies, Facebook, available at <https://www.facebook.com/business/help/205029060038706> (last accessed Aug. 1, 2023).

²⁹ About Meta Pixel, Facebook, available at <https://www.facebook.com/business/help/742478679120153?id=1205376682832142> (last accessed Aug. 1, 2023).

³⁰ Audience ad targeting, Facebook, available at <https://www.facebook.com/business/ads/ad-targeting> (last accessed Aug. 1, 2023).

³¹ Core Audiences, Facebook, available at <https://www.facebook.com/business/news/Core-Audiences> (last accessed Aug. 1, 2023).

63. Advertisers can also build “Custom Audiences.”³² Custom Audiences enable advertisers to reach “people who have already shown interest in [their] business, whether they’re loyal customers or people who have used [their] app or visited [their] website.”³³

64. With Custom Audiences, advertisers can target existing customers directly, and they can also build “Lookalike Audiences,” which “leverages information such as demographics, interests and behaviors from your source audience to find new people who share similar qualities.”³⁴

65. Unlike Core Audiences, advertisers can build Custom Audiences and Lookalike Audiences only if they first supply Meta with the underlying data. They can do so through two mechanisms: by manually uploading customers’ contact information or by utilizing Meta’s “Business Tools.”³⁵

66. The Meta Business Tools “help website owners and publishers, app developers, and business partners, including advertisers and others, integrate with [Facebook], understand and measure their products and services, and better reach and serve people who use or might be interested in their products and services.”³⁶ Put more succinctly, Meta’s Business Tools are bits of code that advertisers can integrate into

³² About Custom Audiences, Facebook, *available at* <https://www.facebook.com/business/help/744354708981227?id=2469097953376494> (last accessed Aug. 1, 2023).

³³ *See* Audience Ad Targeting, *supra* footnote 30.

³⁴ About lookalike audiences, Facebook, *available at* <https://www.facebook.com/business/help/164749007013531?id=401668390442328> (last accessed Aug. 1, 2023).

³⁵ *See* Create a customer list custom audience, Facebook, *available at* <https://www.facebook.com/business/help/170456843145568?id=2469097953376494> (last accessed Aug. 1, 2023); Create a website custom audience, Facebook, *available at* <https://www.facebook.com/business/help/1474662202748341?id=2469097953376494> (last accessed Aug. 1, 2023).

³⁶ The Meta Business Tools, Facebook, *available at* <https://www.facebook.com/help/331509497253087> (last accessed Aug. 1, 2023).

1 their platforms, thereby enabling Meta to intercept and collect user activity on those
2 platforms, and they are automatically configured to capture certain data.³⁷

3 67. Meta's Business Tools can also track other events. Meta offers a menu
4 of "standard events" from which advertisers can choose from, including what content
5 a visitor views or purchases.³⁸ Advertisers can even create their own tracking
6 parameters by building a "custom event."³⁹

7 68. One such Meta Business Tool advertisers, including Planned
8 Parenthood, integrate into their platforms is the Meta Pixel, formerly known as the
9 Facebook Pixel, which launched in 2015. The Meta Pixel "tracks the people and the
10 types of actions they take,"⁴⁰ and Meta touted the Meta Pixel as a new way to report
11 and optimize for conversions, build audiences and get rich insights about how people
12 use websites.

13 69. When a user accesses a website hosting the Meta Pixel, Meta's software
14 script surreptitiously directs the user's browser to contemporaneously send a separate
15 message to Meta's servers. This second secret and contemporaneous transmission
16 contains the original GET request sent to the host website, along with additional data
17 that the Meta Pixel is configured to collect.

18 70. This transmission is initiated by Meta code, written in JavaScript, and
19 concurrent with communications with the host website. At relevant times, two sets of

20 ³⁷ See Advanced, Meta for Developers, *available at* <https://developers.facebook.com/docs/meta-pixel/advanced/> (last accessed Aug. 1, 2023); *see also* Best practices for
21 Meta Pixel setup, Facebook, *available at* <https://www.facebook.com/business/help/218844828315224?id=1205376682832142> (last accessed Aug. 1, 2023); App Events
22 API, Meta for Developers, *available at* <https://developers.facebook.com/docs/marketing-api/app-event-api/> (last accessed Aug. 1, 2023).

24 ³⁸ Specifications for Meta Pixel standard events, Facebook, *available at*
25 <https://www.facebook.com/business/help/402791146561655?id=1205376682832142>
(last accessed Aug. 1, 2023).

26 ³⁹ About standard and custom website events, Facebook, *available at*
27 <https://www.facebook.com/business/help/964258670337005?id=1205376682832142>
(last accessed Aug. 1, 2023); *see also* App Events API, *supra* footnote 37.

28 ⁴⁰ Retargeting, Facebook, *available at* <https://www.facebook.com/business/goals/retargeting> (last accessed Aug. 1, 2023).

1 code are thus automatically run as part of the browser's attempt to load and read
2 websites: the host website's own code and Meta's embedded code.

3 71. Take, for example, an individual who navigates to the Website and clicks
4 on a link for emergency contraception information. When that link is clicked, the
5 Website user's browser sends a GET request to Planned Parenthood's server
6 requesting that server to load the particular webpage, and as a result of Planned
7 Parenthood's use of the Meta Pixel, also sends secret instructions back to the
8 individual's browser without alerting the individual that this was happening. Meta's
9 tracking code caused the browser to secretly duplicate the communication with
10 Planned Parenthood, transmitting it to Meta's servers alongside additional
11 information that transcribed the communication's content and the Website user's
12 identity.

13 72. Taken together, Meta uses the information that Planned Parenthood
14 unlawfully discloses to it in order to identify a specific person and their actions and
15 communications on the Website. Meta, like the other Third Parties, uses this
16 information for advertising, analytics and other purposes.

17 73. After collecting and intercepting the information described in the
18 preceding paragraph, Meta processes it, analyzes it and assimilates it into datasets
19 like Core Audiences and Custom Audiences.

20 74. Planned Parenthood, without its Website users ever communicating
21 their FID on the Website, also discloses its Website's users' FID to Meta as a result of
22 the Meta Pixel embedded on its Website. An FID, which is also a form of PII, is a
23 unique and persistent identifier that Meta assigns to each of its users. With it, any
24 ordinary person can look up the user's Facebook profile and name. Notably, while
25 Meta can easily identify any individual on its Facebook platform with only their
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1 unique FID, so too can any ordinary person.⁴¹ If a Website user has an FID, the Meta
2 Pixel was specifically designed for Meta to receive that Website user's FID from
3 Planned Parenthood alongside other information when the user otherwise
4 communicates on the Website and discloses personal and private information.

5 75. Importantly, if Meta Pixel collects data, from Planned Parenthood or
6 other websites, about a non-Facebook user, Meta still retains and uses the data
7 collected in its analytics and advertising services. These non-users are referred to as
8 having "shadow profiles."⁴²

9 76. Therefore, the Meta Pixel embedded on the Website unlawfully collects
10 data from the communications of *all* users on the Website, not just those with
11 Facebook profiles. However, if a Website user has a Facebook profile, Meta is able to
12 utilize the user's information in more ways, especially if the user does not log out of
13 their Facebook account on the browser they access and use the Website on.

14 77. Still, regardless of whether a Planned Parenthood Website user has a
15 Facebook profile or has ever even visited the Facebook or Meta websites, the Meta
16 Pixel Planned Parenthood has embedded on its website unlawfully discloses
17 communications from *all* of Planned Parenthood's Website users on its Website done
18 via web browsers to Meta. This information includes private and personal healthcare
19 information and other sensitive PII that allows Meta to identify the Website users and
20 connect them and their communications with other information.

21 78. In addition to using the intercepted data to provide analytics services,
22 Meta uses it to improve its personalized content delivery, advertising network,
23 machine-learning algorithms and its ability to identify and target users.

24 ⁴¹ See, e.g., How usernames and user IDs are used on Facebook Profiles, Facebook,
25 available at <https://www.facebook.com/help/211813265517027#> (last accessed Aug. 1,
26 2023).

27 ⁴² Butler, Sydney, *What are Facebook Shadow Profiles, and Should You Be Worried?*,
28 How-To Geek, Dec. 10, 2021, available at <https://www.howtogeek.com/768652/what-are-facebook-shadow-profiles-and-should-you-be-worried/> (last accessed Aug. 1,
2023).

79. Planned Parenthood knowingly and intentionally uses the Meta Pixel and tracking technology on its Website. As a result, Planned Parenthood unlawfully discloses, due to a lack of obtained consent, and aids in Meta's interception of Planned Parenthood's Website users' communications on its Website, which includes private and personal health information and other sensitive PII. The effect of Planned Parenthood's actions is that Meta is able to identify each specific individual Planned Parenthood Website user and access the information they provide on the Website.

b. Google

80. Planned Parenthood also is unlawfully disclosing, due to a lack of obtained consent, to Google its Website users' private and personal health information and other PII. This information reveals each Website user's specific identity that Google then uses for advertising, analytics and other purposes.

81. Google is one of the most valuable publicly traded companies in the world with a market capitalization of over \$1.5 trillion dollars.⁴³ At its core, Google is an advertising company and "make[s] money" from "advertising products [that] deliver relevant ads at just the right time," generating "revenues primarily by delivering both performance advertising and brand advertising."⁴⁴ In 2020, Google generated \$146.9 billion in advertising revenue, which amounted to more than 80 percent of Google's total revenues for the year.⁴⁵

82. The Website sends users' private and personal health information and other sensitive PII that identifies each specific Website user to Google using Google Analytics, a web analytics service that allows website owners to track site visitors'

⁴³ Alphabet Inc. (GOOG), Yahoo! Finance, *available at* <https://finance.yahoo.com/quote/GOOG/> (last accessed Aug. 1, 2023).

⁴⁴ Alphabet Inc. Annual Report Form 10-K, United States Securities and Exchange Commission, *available at* <https://www.sec.gov/Archives/edgar/data/1652044/000165204421000010/goog20201231.htm> (last accessed Aug. 1, 2023).

⁴⁵ *See* Advertising revenue of Google from 2001 to 2022, Statista, *available at* <https://www.statista.com/statistics/266249/advertising-revenue-of-google/> (last accessed Aug. 1, 2023).

1 actions through tracking pixels and other technology in order to target such visitors
2 with personalized advertisements.

3 83. Google touts Google Analytics as a marketing platform that offers “a
4 complete understanding of your customers across devices and platforms...”⁴⁶ It allows
5 companies and advertisers that utilize it the ability to “[u]nderstand how your
6 customers interact across your sites and apps, throughout their entire lifestyle,”
7 “[u]ncover new insights and anticipate future customer actions with Google’s machine
8 learning to get more value out of your data,” “[t]ake action to optimize marketing
9 performance with integrations across Google’s advertising and publisher tools” and
10 “[q]uickly analyze your data and collaborate with an easy-to-use interface and
11 shareable reports.”⁴⁷

12 84. Google Analytics is incorporated into Planned Parenthood’s website by
13 addition of small pieces of JavaScript measurement. This code immediately intercepts
14 a user’s interaction with the webpage every time the user visits it.

15 85. Google Analytics also collects the IP addresses of individual Internet
16 users in order to facilitate and track Internet communications.

17 86. Taken together, Google can use the information that Planned
18 Parenthood unlawfully discloses to it in order to identify a specific Website user’s
19 actions and communications on the Website.

20 87. Regardless of whether a Planned Parenthood Website user has a Google
21 account or has ever even visited the Google website, the Google tracking codes Planned
22 Parenthood has embedded on its Website unlawfully disclose communications from
23 *all* of Planned Parenthood’s Website users on its Website done via web browsers to
24 Google. This information includes private and personal healthcare information and
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27 ⁴⁶ Marketing Platform Analytics, Google, *available at* <https://marketingplatform.google.com/about/analytics/> (last accessed Aug. 1, 2023).

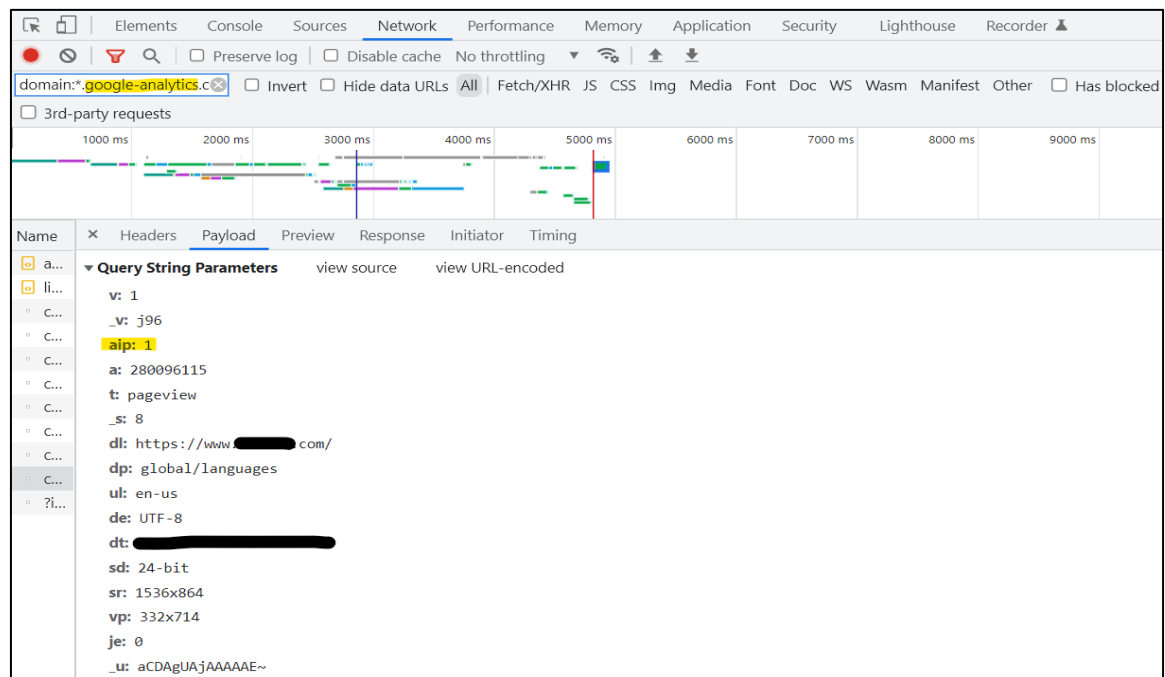
28 ⁴⁷ *Id.*

other sensitive PII that allows Google to identify the Website users and connect them and their communications with other information.

88. Google Analytics offers website owners an opt-in IP anonymization feature. This feature is designed to help website owners comply with their own privacy policies and the recommendations of data protection authorities.

89. If the IP anonymization feature is enabled by the website owner, an additional parameter is added to the communication between website visitors' computers and the Google Analytics server, defined as `aip: 1` and depicted below.

48



90. Accordingly, when the “aip” parameter does not appear, the IP address is not anonymized, thus enabling Google to identify website users’ IP addresses and their online actions.

91. Planned Parenthood does not enable the IP anonymization feature on its Website. This is demonstrated by the absence of the “aip” parameter in the Website’s

⁴⁸ Screenshot taken on May 18-19, 2023 via Chrome web browser.

code. As a result, Google can identify each Planned Parenthood Website user's identity and their specific communications on the Website.

49

```
Host: www.google-analytics.com
Path: /collect

PARAMETERS
  z: 1684399436906
  v: 1
  tid: UA-8867852-25
  cid: 1684399436906 832
  t: event
  dp: /abortion-access
  dh: www.plannedparenthood.org
  dl: https://www.plannedparenthood.org/abortion-access?age=22&location=Los%20Angeles%2C%20CA%2090001&noDate=null&month=04&day=26&year=2023&entryForm=hc%20search%20results
  pa: purchase
  ta: www.plannedparenthood.org
  ec: gtm_monitor
  ea: hc card click book online
  ti: 1684399436906
  el: 1684399421607;911;false;GA1.2.318740178.1684307308
  prlid: 2152
  pr1nm: UA - Event - ASL - HC Book Online
  pr1va: success
```

92. Once Google's code collects the data, it packages the information and sends it to Google Analytics for processing. Google Analytics also allows the company to customize the processing of the data, such as applying filters. Once the data is processed, it is stored on a Google Analytics' database and cannot be changed.

93. Google then uses this data to generate reports for Planned Parenthood to help analyze the data. These include reports on acquisition (e.g., information about where your traffic originates, the methods by which users arrive at your platform and the marketing efforts you use to drive traffic), engagement (e.g., measure user engagement by the events and conversion events that users trigger and the web pages and application screens that users visit) and demographics (e.g., classify your users

⁴⁹ Screenshot taken on May 18-19, 2023 via Chrome web browser.

1 by age, location, language and gender along with interests they express through their
2 online browsing and purchase activities).

3 94. In addition to using the data collected through Google Analytics to
4 provide marketing and analytics services, Planned Parenthood also uses the data to
5 improve its advertisement targeting capabilities and data points on users and
6 consumers.

7 95. Planned Parenthood is also unlawfully disclosing and sharing
8 information with DoubleClick, a “Google Ads” conversion tracking product.

9 96. When a user visits a website or interacts with an application that
10 displays Google Ads, Google’s advertising platform, their browser sends a request to
11 googleads.g.doubleclick.net to fetch the advertising content. This domain handles the
12 advertising serving infrastructure, including tracking impressions, clicks and
13 conversions.

14 97. Planned Parenthood knowingly and intentionally uses Google’s tracking
15 pixels and other technology on its Website via Google Analytics and DoubleClick. As
16 a result, Planned Parenthood unlawfully discloses, due to a lack of obtained consent,
17 and aids in Google’s unlawful interception of Planned Parenthood’s Website users’
18 communications on its Website, which includes private and personal health
19 information and other sensitive PII. The effect is that Google is able to identify each
20 specific individual Planned Parenthood Website user and access the information they
21 provide on the Website.

22 **c. Microsoft**

23 98. Planned Parenthood also is unlawfully disclosing, due to a lack of
24 obtained consent, to Microsoft its Website users’ private and personal health
25 information and other PII. This information reveals each Website user’s specific
26 identity that Microsoft then uses for advertising, analytics and other purposes.

27 99. Planned Parenthood is unlawfully sharing information with Microsoft
28 through bat.bing.com (“Bing Ads”), which is a domain owned and operated by

1 Microsoft and used for tracking and analytics purposes, and which is used on the
2 Website.

3 100. When a website user interacts with Bing Ads, which is also known as
4 Microsoft Ads and is Microsoft's advertising platform, Bing Ads is responsible for
5 collecting certain information and setting cookies on the website user's browsers.

6 101. These cookies help track and analyze website user behavior, measure the
7 effectiveness of advertising campaigns and provide relevant advertisements based on
8 the website user's interests and browsing history.

9 102. Regardless of whether a Planned Parenthood Website user has a
10 Microsoft account or has ever even visited the Microsoft website, the Microsoft
11 tracking codes Planned Parenthood has embedded on its Website unlawfully disclose
12 communications from *all* of Planned Parenthood's Website users on its Website done
13 via web browsers to Microsoft. This information includes private and personal
14 healthcare information and other sensitive PII that allows Microsoft to identify the
15 Website users and connect them and their communications with other information.

16 103. Planned Parenthood knowingly and intentionally uses Microsoft's code
17 on its Website. As a result, Planned Parenthood unlawfully discloses, due to a lack of
18 obtained consent, and aids in Microsoft's unlawful interception of Planned
19 Parenthood's Website users' communications on its Website, which includes private
20 and personal health information and other sensitive PII. The effect is that Microsoft
21 is able to identify each specific individual Planned Parenthood Website user and
22 access the information they provide on the Website.

23 **d. Yahoo**

24 104. Planned Parenthood is also unlawfully disclosing, due to a lack of
25 obtained consent, to Yahoo its Website users' private and personal health information
26 and other PII. This information reveals each Website user's specific identity that
27 Yahoo then uses for advertising, analytics and other purposes.

1 105. The Website sends its users' private and personal sexual and
2 reproductive health information and other sensitive PII to Yahoo using Yahoo
3 Analytics, which Planned Parenthood has embedded into its Website.

4 106. Yahoo Analytics enables website owners to track various metrics, such
5 as page views, unique visitors, bounce rates and conversion rates.

6 107. Yahoo Analytics uses a variety of tools, including "IP addresses, web
7 beacons, SDKs, cookies, and similar technologies to recognize, associate, and collect
8 data about visitors to Yahoo's and our customer's sites, apps, products, brands and
9 services."⁵⁰

10 108. Regardless of whether a Planned Parenthood Website user has a Yahoo
11 account or has ever even visited the Yahoo website, the Yahoo tracking codes Planned
12 Parenthood has embedded on its Website unlawfully disclose communications from
13 *all* of Planned Parenthood's Website users on its Website done via web browsers to
14 Yahoo. This information includes private and personal healthcare information and
15 other sensitive PII that allows Yahoo to identify the Website users and connect them
16 and their communications with other information.

17 109. Taken together, Yahoo uses the information that Planned Parenthood
18 unlawfully discloses to it in order to identify a specific Website user and their actions
19 and communications on the Website.

20 110. Planned Parenthood knowingly and intentionally uses Yahoo's code on
21 its Website. As a result, Planned Parenthood unlawfully discloses, due to a lack of
22 obtained consent, and aids in Yahoo's unlawful interception of Planned Parenthood's
23 Website users' communications on its Website, which includes private and personal
24 health information and other sensitive PII. The effect is that Yahoo is able to identify
25 each specific individual Planned Parenthood Website user and access the information
26 they provide on the Website.

27 _____
28 ⁵⁰ Privacy Center – Yahoo Analytics, Yahoo!, *available at* <https://legal.yahoo.com/us/en/yahoo/privacy/topics/analytics/index.html> (last accessed Aug. 1, 2023).

V. Planned Parenthood Unlawfully Disclosed Plaintiffs and Class Members' Private and Personal Sexual and Reproductive Health Information and Other Sensitive PII to the Third Parties and Assisted the Third Parties with the Unlawful Interception of Communications Containing Such Information

a. Illustration of How Planned Parenthood Unlawfully Discloses and Aids in the Interception of Plaintiffs and Class Members' Private and Protected Personal Information

111. Upon entering the Website's homepage, Website users are able to search for a Planned Parenthood health center by location and service, and they can filter results by telehealth and/or in-person appointments.

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112. Depending on what service the Website users select, they may be required to provide additional information. For example, when a Planned Parenthood Website user specifically searches for abortion services, they encounter an additional requirement. In order to proceed, they are prompted to provide their age and the first day of their last menstrual period.

⁵¹ Screenshot taken on May 18-19, 2023 via Chrome web browser.

Planned Parenthood

LEARN GET CARE GET INVOLVED DONATE SEARCH

your own. Make an in-person or telehealth appointment online or call [1-800-230-PLAN](tel:1-800-230-PLAN).

Find a Health Center

ZIP, CITY, OR STATE

90001

SERVICE

Abortion

Please enter your age and the first day of your last period for more accurate abortion options. Your information is private and anonymous.

FIRST DAY OF YOUR LAST PERIOD

AGE

☐ I'm not sure

FIND ABORTION PROVIDER

113. Once Website users submit their information in the above described scenario for abortion services (or for whatever other treatment they may be seeking), the information is automatically and simultaneously sent directly to all of the Third Parties, as evidenced in the below six screenshots. Specifically, Planned Parenthood transmitted the following information during this process involving communications with a Website user: that the user searched for an abortion clinic around zip code 90001, that she is 22 years old and that the first day of her last period was on April 26, 2023. It even estimated how far along the user was in her pregnancy. Importantly, it also communicated various PII in this scenario, including, but not limited to, the person's IP address and FID.

⁵² Screenshot taken on May 18-19, 2023 via Chrome web browser.

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Planned Parenthood

LEARN ▼ GET CARE ▼ GET INVOLVED ▼ DONATE SEARCH

Abortion Clinics Near You

View Planned Parenthood health centers that provide abortion care and get the information you need to schedule an appointment.

AGE: 22 ZIP, CITY OR STATE: 90001 FIRST DAY OF YOUR LAST PERIOD: 04/26/2023

☐ I'm not sure

RESUBMIT

Your information is private and anonymous.

Available centers only All Health Centers

You are about 3 weeks and 1 day pregnant.

California allows abortion until about 24 weeks into pregnancy or later, in some cases. Abortion options at your stage generally include:

54

URL

+ https://www.facebook.com/tr/?id=433242851216452&ev=PageView&dl=https%3A%2F%2Fwww.plannedparenthood.org%2F&rl=https%3A%2F%2Fwww.plannedparenthood.org%2F-abortion-access%3Fage%3D22%26month%3D4%26day%3D26%26year%3D2023%26location%3D90001%26entryForm%3D&if=fa&se&ts=1684408567881&sw=1920&sn=1080&v=2.9.104&r=stable&ec=0&o=2&fbp=fb.1.1684307320145.687633086&it=1684408567830&coo=false&dpo=&tm=1&rqm=GET

HEADERS

+ accept: image/avif,image/webp,image/apng,image/svg+xml,image/*,*/*;q=0.8

+ accept-encoding: gzip, deflate, br

+ accept-language: en-US,en;q=0.9

+ connection: keep-alive

+ cookie: sb=k0BlZJeVAFdU7pQ1e950-s62; datr=k0BlZPmhpe-kqAnemdQf6j70; locale=en_US; dpr=1; c_user=1211; xs=26%3A-2evcb-0dm_p-A%3A2%3A1684399194%3A-1%3A15165; fr=0i6WZZzQyQckUb07J.AWUd63xxrIjdt3l0sZKNud0VDCY.BkZeCQ.wn.AAA.0.0.BkZeRc.AWUzh4HGWbA

+ host: www.facebook.com

+ referer: https://www.plannedparenthood.org/

sec-ch-ua: "Google Chrome";v="113", "Chromium";v="113", "Not-A.Brand";v="24"

sec-ch-ua-mobile: ?0

sec-ch-ua-platform: "Windows"

⁵³ Screenshot taken on May 18-19, 2023 via Chrome web browser.

⁵⁴ Screenshot taken on May 18-19, 2023 via Chrome web browser.

55

URL

+ https://www.google-analytics.com/collect?z=1684399436906&v=1&tid=UA-8867852-25&cid=1684399436906&gclid=1684399436906&event=2&_fbaction=access&dh=www.plannedparenthood.org&dl=https%3A%2F%2Fwww.plannedparenthood.org%2F-abortion-access%3Fage%3D22%26location%3DLos%2520Angles%252C%2526CA%2520900001%26noDate%3Dnull%26months%3D0%26day%3D2%26year%3D2023%26entryForm%3Dhc%2520search%2520results&pa=purchase&sa=www.plannedparenthood.org&sc=gtm_monitor&ea=hc%20card%20click%20book%20online&ti=1684399436906&el=1684399421607;911;false;GA1.2.318740178.1684307308&prid=2152&pr1nm=UA%20-%20Event%20-%20ASL%20-%20HC%20book%20online&pr1va=success&pr1ca=hc%20card%20click%20book%20online&pr1br=2&Faction=access&pr1qt=1&pr1pr=6.00&pr2id=2507&pr2nm=unnamed%20tag%20with%20ID%3A%202507&pr2va=success&pr2ca=hc%20card%20click%20book%20online&pr2br=2&Faction=access&pr2qt=1&pr2pr=85.00&pr3id=2274&pr3nm=unnamed%20tag%20with%20ID%3A%202274&pr3va=success&pr3ca=hc%20card%20click%20book%20online&pr3br=2&Faction=access&pr3qt=1&pr3pr=2.00&tr=3.00&ev=3

HEADERS

```
+ accept: image/avif,image/webp,image/apng,image/svg+xml,image/*,*/*;q=0.8
+ accept-encoding: gzip, deflate, br
+ accept-language: en-US,en;q=0.9
+ connection: keep-alive
+ host: www.google-analytics.com
+ referer: https://www.plannedparenthood.org/
  sec-ch-ua: "Google Chrome";v="113",
    "Chromium";v="113", "Not-A.Brand";v="24"
```

56

+ https://googleads.g.doubleclick.net/pagead/viewthroughconversion/644728173/?random=16844085658606cv=116fst=16844085658606bg=fffff8guid=ON8async=1>m=45He35a08u_w=19208u_h=1080&url=https%3A%2F%2Fwww.plannedparenthood.org%2F26month/vietnam-plannedparenthood.org%2Fabortion-access%3Age%3D22%26month%3D4%26day%3D26%26year%3D2023%26location%3D90001%26entryForm%3Dnbn=www.googleadservices.com&frm=0&tiba=Planned%20Parenthood%20%7C%20Official%20Site&uid=524117785.1684307308&ua=x86&uab=64&uafvl=Google%2520Chrome%3B113.0.5672.127%7CChromium%3B113.0.5672.127%7CNot-A.Brand%3B24.0.0.0&uamb=0&uap=Windows&uavp=15.0.0&uaw=0&rfmt=3&fmt=4

HEADERS

```
+ accept: */*
+ accept-encoding: gzip, deflate, br
+ accept-language: en-US,en;q=0.9
+ connection: keep-alive
+ cookie: IDE=AHWqTUnrxWMmpcMobMYKo8kicuEic2cijc1tJWx
tMSqLU80Sz8vDpALRINassz06gqU
+ host: googleads.g.doubleclick.net
+ referer: https://www.plannedparenthood.org/
sec-ch-ua: "Google Chrome";v="113",
"Chromium";v="113", "Not-A.Brand";v="24"
sec-ch-ua-mobile: ?0
sec-ch-ua-
platform: Windows"
```

⁵⁵ Screenshot taken on May 18-19, 2023 via Chrome web browser.

⁵⁶ Screenshot taken on May 18-19, 2023 via Chrome web browser.

57

+ https://bat.bing.com/action/0?ti=50616998tm=gtm002&Ver=2&mid=4e8c989b-1368-4523-86fb-911c286744d1&sid=a07d7840f48111eda413b5a45a aa7bb1&vid=a07d88a0f48111eda8fe034b7465f171&vids=0&msclkid=N&uach=pv%3D15.0.0&pi=918639831&lg=en-US&sw=1920&sh=1080&sc=24&tl=Planned%20Parenthood%20%7C%20Official%20Site&p=https%3A%2F%2Fwww.plannedparenthood.org%2F&r=https%3A%2F%2Fwww.plannedparenthood.org%2F-abortion-access%3Fage%3D22%26month%3D4%26day%3D26%26year%3D2023%26location%3D90001%26entryForm%3D<=519&evt=pageLoad&sv=1&rn=370663

HEADERS

+ accept: image/avif,image/webp,image/apng,image/svg+xml,image/*,*/*;q=0.8
 + accept-encoding: gzip, deflate, br
 + accept-language: en-US,en;q=0.9
 + connection: keep-alive
 + cookie: MUID=341FB0B564746B1B1D98A3A165F06A68; MR=0
 + host: bat.bing.com
 + referer: https://www.plannedparenthood.org/
 sec-ch-ua: "Google Chrome";v="113",
 "Chromium";v="113", "Not-A.Brand";v="24"
 sec-ch-ua-mobile: ?0
 sec-ch-ua: "Windows"

58

+ https://sp.analytics.yahoo.com/sp.pl?a=10000&d=Thu%2C%2018%20May%202023%2011%3A16%3A06%20GMT&n=-3d&b=Planned%20Parenthood%20%7C%20Official%20Site&.yp=10095773&f=https%3A%2F%2Fwww.plannedparenthood.org%2F&e=https%3A%2F%2Fwww.plannedparenthood.org%2F-abortion-access%3Fage%3D22%26month%3D4%26day%3D26%26year%3D2023%26location%3D90001%26entryForm%3D&enc=UTF-8&yv=1.14.0&tagmgr=gtm

HEADERS

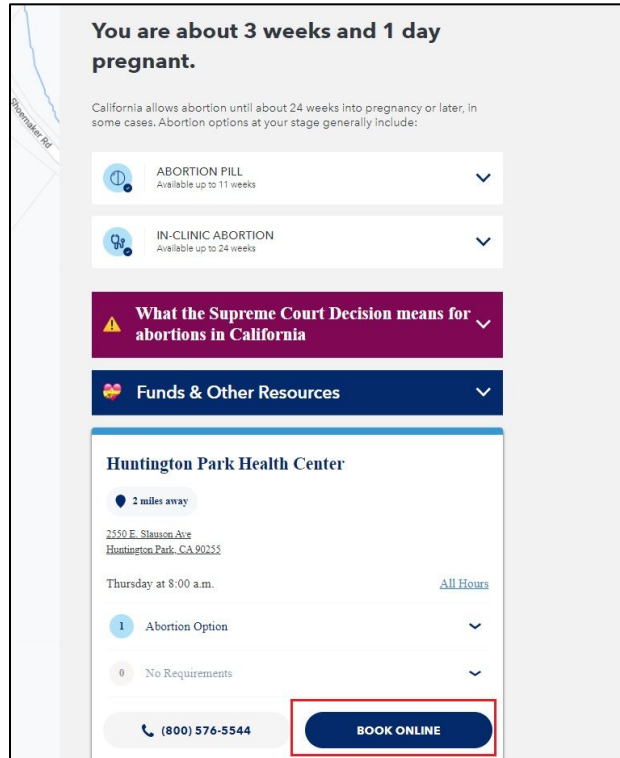
+ accept: image/avif,image/webp,image/apng,image/svg+xml,image/*,*/*;q=0.8
 + accept-encoding: gzip, deflate, br
 + accept-language: en-US,en;q=0.9
 + connection: keep-alive
 + cookie: A3=d=AQABBJ9ZGQCEJ1vjeo203iNX6oQ4VI4-5gFEgEBAQH0ZWRuZnNr0iMA_eMAAA&S=AQAAAKBCNiISKJMTZrsC3djXl_c; IDSYNC=1769~2bov
 + host: sp.analytics.yahoo.com
 + referer: https://www.plannedparenthood.org/
 sec-ch-ua: "Google Chrome";v="113",
 "Chromium";v="113", "Not-A.Brand";v="24"
 sec-ch-ua-mobile: ?0
 sec-ch-ua: "Windows"

⁵⁷ Screenshot taken on May 18-19, 2023 via Chrome web browser.

⁵⁸ Screenshot taken on May 18-19, 2023 via Chrome web browser.

114. After submitting their information, regardless of the service they select, Website users are directed to the search results page, where they can choose a clinic and book an appointment. This information, along with PII, is shared with at least Google once a user clicks the “book online” button.

59



60

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- https://www.google-analytics.com/collect?z=1684313280128&v=1&ti
d=UA-8867852-25&cid=1684313280128%20291&t=event&dp=%2Fabortion-ac
cess&dh=www.plannedparenthood.org&dl=https%3A%2F%2Fwww.plannedpar
enthood.org%2Fabortion-access%3Fage%3D22%26month%3D4%26day%3D26%2
6year%3D2023%26location%3DLos%2520Angeles%2520CA%252090001%2
6entryForm%3D&pa=purchase&ta=www.plannedparenthood.org&ec=gtm_mon
itor&ea=hc%20card%20click%20book%20online&ti=1684313280128&el=168
4313264401;753;false;GA1.2.318740178.1684307308&pr1id=2152&pr1nm=
UA%20-%20Event%20-%20ASL%20-%20HC%20Book%20Online&pr1va=succes&p
r1ca=hc%20card%20click%20book%20online&pr1br=%2Fabortion-access&p
r1qt=1&pr1pr=5.00&pr2id=2507&pr2nm=unnamed%20tag%20with%20ID%3A%2
02507&pr2va=succes&pr2ca=hc%20card%20click%20book%20online&pr2br
=%2Fabortion-access&pr2qt=1&pr2pr=80.00&pr3id=2274&pr3nm=unnamed%
20tag%20with%20ID%3A%202274&pr3va=succes&pr3ca=hc%20card%20clik
k%20book%20online&pr3br=%2Fabortion-access&pr3qt=1&pr3pr=1.00&tr=
3.00&ev=3

```

⁵⁹ Screenshot taken on May 18-19, 2023 via Chrome web browser.

⁶⁰ Screenshot taken on May 18-19, 2023 via Chrome web browser.

1 115. Plaintiff never consented, agreed, authorized or otherwise permitted
2 Planned Parenthood to disclose her private and personal sexual and reproductive
3 health information and other sensitive PII that she communicated to Planned
4 Parenthood on a web browser via the Website. This information allows the Third
5 Parties to identify each specific individual Planned Parenthood Website user and
6 access the communications they provide.

7 116. Plaintiff was never provided any full and proper written notice that
8 Planned Parenthood disclosed her protected sexual and reproductive health
9 information and other sensitive PII that revealed her identity when she used the
10 Website, nor was she provided any means of opting out of all such disclosures. Planned
11 Parenthood nonetheless knowingly and intentionally disclosed Plaintiff's private and
12 personal sexual and reproductive health information and other sensitive PII to the
13 Third Parties.

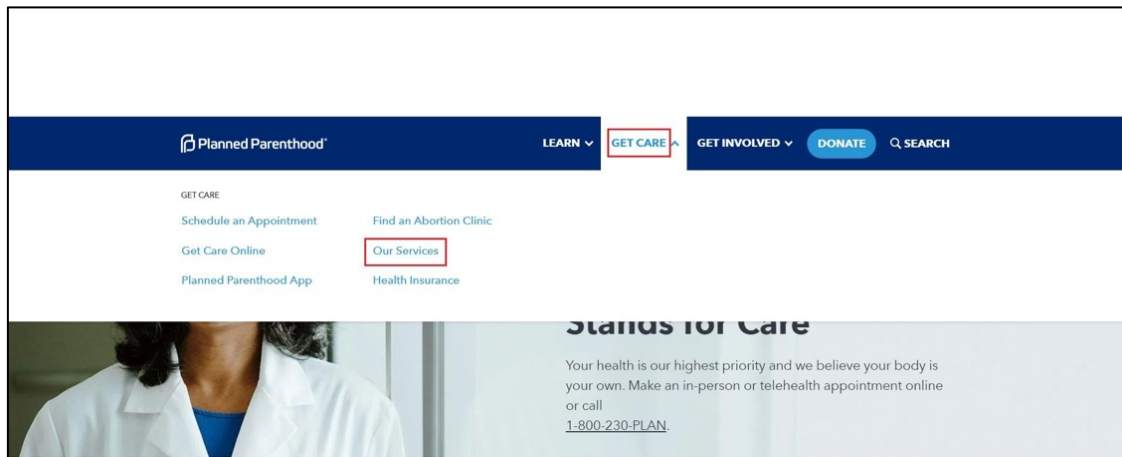
14 117. By law, Plaintiff is entitled to privacy in her private and personal sexual
15 and reproductive health information and confidential communications. Planned
16 Parenthood deprived Plaintiff and other members of the Class of their privacy rights
17 when it:

- 18 (1) implemented a system that surreptitiously tracked, recorded
19 and disclosed Plaintiff's and other Website users' confidential
20 interactions, communications, protected health information
21 and other sensitive PII via the Website;
- 22 (2) disclosed Website users' protected health information and other
23 sensitive PII communicated on the Website to numerous Third
24 Parties, who are all unauthorized eavesdroppers; and
- 25 (3) undertook this pattern of conduct without notifying Plaintiff and
26 other Website users and without obtaining their express written
27 consent. Plaintiff did not discover that Planned Parenthood
28 disclosed and assisted the Third Parties in intercepting her
 private and personal health information and other sensitive PII
 until July 2023.

b. Illustration of the Types of Information Planned Parenthood Unlawfully Discloses and Aids Third Parties to Intercept

118. Planned Parenthood offers Website users a variety of Women's Services and Men's Services, and users may hover over the "get care" tab on the Website's homepage and choose the "our services" button to see the various services offered. Once the Website users are presented with a list of the Planned Parenthood services offered to them, they can also click the "learn more" tab to learn more about each service offered on the Website by Planned Parenthood.

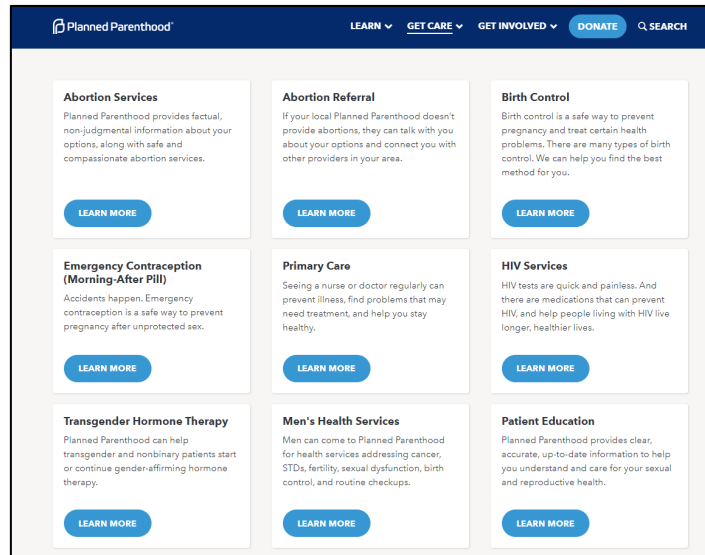
61



62

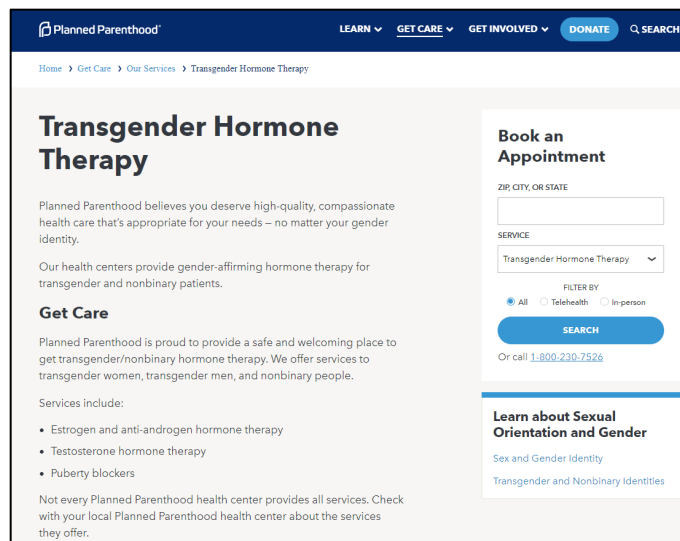
⁶¹ Screenshot taken on May 18-19, 2023 via Chrome web browser.

⁶² Screenshot taken on May 18-19, 2023 via Chrome web browser.



119. Upon selecting a service to “learn more” about, the chosen service’s name is shared with multiple third parties, explicitly revealing in this illustration that the Website user clicked on, and wanted to learn more about, “transgender hormone therapy.” Additionally, and at the same time, the user’s PII was disclosed to the Third Parties, including their IP address and FID.

63



64

⁶³ Screenshot taken on May 18-19, 2023 via Chrome web browser.

⁶⁴ Screenshot taken on May 18-19, 2023 via Chrome web browser.

```

+ https://www.facebook.com/tr/?id=433242851216452&ev=PageView&dl=
https%3A%2F%2Fwww.plannedparenthood.org%2Fget-care%2Four-service
s%2Ftransgender-hormone-therapy&tl=https%3A%2F%2Fwww.plannedparen
thood.org%2Fget-care%2Four-services&if=false&ts=1684422320781&sw=
1920&sh=1080&v=2.9.104&tr=stable&ec=0&eo=29&fbp=fb.1.1684307320145.
6876330866it=1684422320573&coo=false&dpo=&tm=1&rqm=GET

HEADERS
+ accept: image/avif,image/webp,image/apng,image/svg+xml,image/*,*/*;q=0.8
+ accept-encoding: gzip, deflate, br
+ accept-language: en-US,en;q=0.9
+ connection: keep-alive
+ cookie: sb=k0BLZJeVAFdU7pQ1e95Q-s62;
datr=k0BLZPmhpe-kqAnemdQf6i7Q;
locale=en_US; dpr=1; c_user=1212[REDACTED]
xs=26%3A-2evcb-0dm_p-A%3A2%3A1684399194%3A-
1%3A15165;
fr=0i6WZZzQyQCKUb07J.AWUd63xxrIjdt3l0sZKNUd
0VDCY.BkZeCQ.wn.AAA.0.0.BkZeRc.AWUzh4HGWBa
+ host: www.facebook.com
+ referer: https://www.plannedparenthood.org/
sec-ch-ua: "Google Chrome";v="113",
"Chromium";v="113", "Not-A.Brand";v="24"

```

65

```

+ https://googleads.g.doubleclick.net/pagead/viewthroughconversion/952276156/?random=16844
22471046&cv=11&fst=1684422471046&bg=ffffff&guid=ON&asyn=1&gtm=45He35a0&u_w=1920&u_h=1080&
url=https%3A%2F%2Fwww.plannedparenthood.org%2Fget-care%2Four-services%2Ftransgender-hormon
e-therapy&ref=https%3A%2F%2Fwww.plannedparenthood.org%2Fget-care%2Four-services&hn-www.goo
gleadservices.com&frm=0&tiba=LGBT%20Services%20%7C%20Education%2C%20Support%20%26%20Healt
h%20Services&aid=524117785.1684307308&uaa=x86&uab=64&uafvl=Google%2520Chrome%3B113.0.567
2.127%7CChromium%3B113.0.5672.127%7CNot-A.Brand%3B24.0.0&uamb=0&uap=Windows&uapv=15.0.0&
uaw=0&rfmt=3&fmt=4

HEADERS
+ accept: */*
+ accept-encoding: gzip, deflate, br
+ accept-language: en-US,en;q=0.9
+ connection: keep-alive
+ cookie: IDE=AHWqTUnrxWMmpcMobMYKo8kicuEic2cijc1tJWxtMSqLU80Sz8vDpALRINassz06
gqU
+ host: googleads.g.doubleclick.net
+ referer: https://www.plannedparenthood.org/
sec-ch-ua: "Google Chrome";v="113", "Chromium";v="113", "Not-A.Brand";v="24"
sec-ch-ua-mobile: ?0
sec-ch-ua-platform: "Windows"
+ sec-fetch-dest: script

```

120. Additionally, the “transgender hormone therapy” page, as well as the pages for other services, enables Website users to explore Planned Parenthood clinics that offer the service within their desired zip code and schedule appointments. When a user clicks the “search” button, both their search location and their request for an

65 Screenshot taken on May 18-19, 2023 via Chrome web browser.

1 appointment regarding LGBT services are shared with some third parties, including,
 2 but not limited to, Google. PII that reveals the Website user's individual identity is
 3 also disclosed simultaneously.

66

Book an Appointment

ZIP, CITY, OR STATE

Los Angeles, CA 90001

SERVICE

Transgender Hormone Therapy

FILTER BY

☒ All ☐ Telehealth ☐ In-person

SEARCH

Or call [1-800-230-7526](tel:1-800-230-7526)

67

⁶⁶ Screenshot taken on May 18-19, 2023 via Chrome web browser.

⁶⁷ Screenshot taken on May 18-19, 2023 via Chrome web browser.

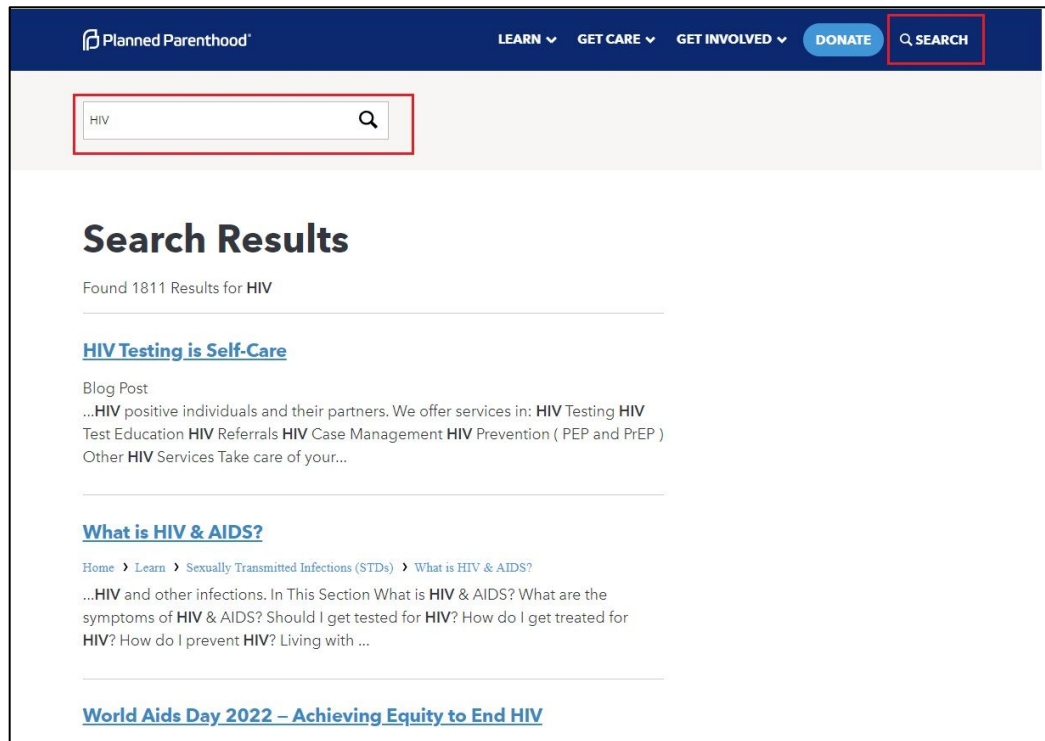

```
+ https://www.google-analytics.com/collect?z=1684424663266&v=1&tid=UA-8867852-25&cid=1684424663266%20249&dt=event&dp=%2Fhealth-center&dh=www.plannedparenthood.org&dl=https%3A%2F%2Fwww.plannedparenthood.org%2Fhealth-center%3Flocation%3DLos%2BAngelos%252C%2BCA%2B90001%26service%3Dlgbt%26channel%3Dany%26page%3D1&pa=purchase&ta=www.plannedparenthood.org&ec=gtm_monitors&ea=gtm.linkClick&ti=1684424663266&el=1684423339270;727;false;GA1.2.318740178.1684307308&pr1id=99&pr1nm=unnamed%20tag%20with%20ID%3A%2099&pr1va=success&pr1ca=gtm.linkClick&pr1br=%2Fhealth-center&pr1qt=1&pr1pr=272.00&pr2id=421&pr2nm=unnamed%20tag%20with%20ID%3A%20421&pr2va=success&pr2ca=gtm.linkClick&pr2br=%2Fhealth-center&pr2qt=1&pr2pr=7.00&pr3id=461&pr3nm=UA%20-%20Event%20-%20HC%20Search%20Results%20-%20Request%20An%20Appointment&pr3va=success&pr3ca=gtm.linkClick&pr3br=%2Fhealth-center&pr3qt=1&pr3pr=9.00&pr4id=2507&pr4nm=unnamed%20tag%20with%20ID%3A%202507&pr4va=success&pr4ca=gtm.linkClick&pr4br=%2Fhealth-center&pr4qt=1&pr4pr=242.00&tr=4.00&ev=4
```

HEADERS

```
+ accept: image/avif,image/webp,image/apng,image/svg+xml,image/*,*/*;q=0.8
+ accept-encoding: gzip, deflate, br
+ accept-language: en-US,en;q=0.9
+ connection: keep-alive
+ host: www.google-analytics.com
+ referer: https://www.plannedparenthood.org/
  sec-ch-ua: "Google Chrome";v="113", "Chromium";v="113", "Not-A.Brand";v="24"
  sec-ch-ua-mobile: ?0
  sec-ch-ua-platform: "Windows"
+ sec-fetch-dest: image
+ sec-fetch-mode: no-cors
+ sec-fetch-site: cross-site
```

121. Furthermore, as previously alleged, information communicated and shared by Website users through the search bar on the Website is also unlawfully disclosed to the Third Parties. Notably, users can input anything into the search bar, so there is a seemingly endless amount of private and personal information that is unlawfully disclosed by Planned Parenthood to the Third Parties via its search bar. The example below shows what is transmitted to the Third Parties when a Website user searches for information and services related to HIV. The transmitted information includes PII that reveals the Website user's identity to the Third Parties, along with all of the other inherently sensitive information that the user communicated on the Website when searching for information and services related to HIV.

⁶⁸ Screenshot taken on May 18-19, 2023 via Chrome web browser.



69

```
+ https://www.facebook.com/tr/?id=433242851216452&ev=PageView&dl=https%3A%2F%2Fwww.plannedparenthood.org%2Fsearch%3Fq%3DHIV%2B&rl=https%3A%2F%2Fwww.plannedparenthood.org%2F&it=false&ts=1684477278248&sw=1920&sh=1080&v=2.9.104&r=stable&ec=0&o=29&fbp=fb.1.1684307320145.687633086&it=1684477278195&coo=false&dpo=&tm=1&rqm=GET
```

HEADERS

```
+ accept: image/avif,image/webp,image/apng,image/svg+xml,image/*,*/*;q=0.8
+ accept-encoding: gzip, deflate, br
+ accept-language: en-US,en;q=0.9
+ connection: keep-alive
+ cookie: sb=kOBLZJeVAFdU7pQ1e95Q-s62; datr=kOBLZPmhpe-kqAnemdQf6j70; locale=en_US; dpr=1; c_user=1212; s=26%3A-2evcb-0dm_p-A%3A2%3A1684599194%3A-1%3A15165; fr=0i6WZZzQyQCKUb07J.AWUd63xxrIjdt3l0sZKNUd0VD CY.BkZeCQ.wn.AAA.0.0.BkZeRc.AWUzh4HGWBa
+ host: www.facebook.com
+ referer: https://www.plannedparenthood.org/
sec-ch-ua: "Google Chrome";v="113", "Chromium";v="113", "Not-A.Brand";v="24"
```

69 Screenshot taken on May 18-19, 2023 via Chrome web browser.

70

+ https://googleads.g.doubleclick.net/pagead/viewthroughconversion/792381940/?random=1684477272584&cv=11&fst=1684477272584&bg=ffffff&guid=ON&async=1>m=45He35h0&u_w=1920&u_h=1080&url=https%3A%2F%2Fwww.plannedparenthood.org%2Fsearch%3Fq%3DHIV%2B&ref=https%3A%2F%2Fwww.plannedparenthood.org%2F&hn=www.googleadservices.com&frm=0&tl=Search%20Results&uid=524117785.1684307308&uaa=x86&uab=64&uafvl=Google%2520Chrome%3B113.0.5672.127%7CChromium%3B113.0.5672.127%7CNot-A.Brand%3B24.0.0.0&uamb=0&uap=Windows&uapv=15.0.0&uaw=0&rfmt=3&fmt=4

HEADERS

+ accept: /*
 + accept-encoding: gzip, deflate, br
 + accept-language: en-US,en;q=0.9
 + connection: keep-alive
 + cookie: IDE=AHWqTuk88j4lEyoBSxnBLCIjFagQqoTJvMV3b-MDGGJNSLPesb51-GRZxQyOjqgh0l8
 + host: googleads.g.doubleclick.net
 + referer: https://www.plannedparenthood.org/
 sec-ch-ua: "Google Chrome";v="113", "Chromium";v="113", "Not-A.Brand";v="24"
 sec-ch-ua-mobile: ?0
 sec-ch-ua-platform: "Windows"
 + sec-fetch-dest: script
 + sec-fetch-mode: no-cors

71

+ https://bat.bing.com/action/0?ti=5061699&tm=gtm002&Ver=2&mid=55d797ab-4b17-400a-9d70-4cdeec748672&sid=a07d7840f48111eda413b5a45aaa7bb1&vid=a07d88a0f48111eda8fe034b7465f171&vids=0&msclkid=N&uach=pv%3D15.0.0&pi=918639831&lg=en-US&sw=1920&sh=1080&sc=24&tl=Search%20Results&p=https%3A%2F%2Fwww.plannedparenthood.org%2Fsearch%3Fq%3DHIV%2B&r=https%3A%2F%2Fwww.plannedparenthood.org%2F<=5135&evt=pageLoad&sv=1&r=n=536071

HEADERS

+ accept: image/avif,image/webp,image/apng,image/svg+xml,image/*,*/*;q=0.8
 + accept-encoding: gzip, deflate, br
 + accept-language: en-US,en;q=0.9
 + connection: keep-alive
 + cookie: MUID=341FB0B564746B1B1D98A3A165F06A68; MR=0
 + host: bat.bing.com
 + referer: https://www.plannedparenthood.org/
 sec-ch-ua: "Google Chrome";v="113", "Chromium";v="113", "Not-A.Brand";v="24"
 sec-ch-ua-mobile: ?0

⁷⁰ Screenshot taken on May 18-19, 2023 via Chrome web browser.

⁷¹ Screenshot taken on May 18-19, 2023 via Chrome web browser.

```

+ https://sp.analytics.yahoo.com/sp.pl?a=10000&d=Fri%2C%2019%20May%202023%2006%3A21%3A12%20GMT&n=-3d&b=Search%20Results&.yp=10095773&f=https%3A%2F%2Fwww.plannedparenthood.org%2Fsearch%3Fq%3DHIIV%2B&e=https%3A%2F%2Fwww.plannedparenthood.org%2F&enc=UTF-8&yv=1.14.0&tagmgr=gtm

HEADERS

+ accept: image/avif,image/webp,image/apng,image/svg+xml,image/*,*/*;q=0.8
+ accept-encoding: gzip, deflate, br
+ accept-language: en-US,en;q=0.9
+ connection: keep-alive
+ cookie: A3=d=AQABBJ9ZGQCEJ1vjeo203iNX6oQ4VI4-5gFEgEBAQH0ZWRuZNwr0iMA_eMAAA&S=AQAAAkBCNiISkJMTZrsC3djXl_c; IDSYNC=1769~2bov
+ host: sp.analytics.yahoo.com
+ referer: https://www.plannedparenthood.org/
  sec-ch-ua: "Google Chrome";v="113", "Chromium";v="113", "Not-A.Brand";v="24"
  sec-ch-ua-mobile: ?0

```

122. The above illustrations highlight just some of the vast information Planned Parenthood unlawfully discloses to the Third Parties and unlawfully aids the Third Parties to intercept. Taken together, this information reveals not only the identity of Planned Parenthood Website users, but it also gives the Third Parties access to their inherently sensitive and private healthcare information.

VI. Planned Parenthood is Aware that Plaintiff's and Class Members' Communications They Unlawfully Disclose Include PHI and Other Sensitive PII

123. By design of the Tracking Codes Planned Parenthood chooses to utilize on its Website, it was well aware that placing the Tracking Codes on its Website would result in the unlawful disclosure and use of Plaintiff's and class members' PHI and other sensitive PII that reveals a person's identity to the Third Parties.

⁷² Screenshot taken on May 18-19, 2023 via Chrome web browser.

124. Further, as a covered entity under HIPAA, Planned Parenthood is required by law to know the types of information it collects and how it is supposed to preserve and maintain it.

VII. Plaintiff and Other Class Members Suffered Great Harm as a Result of the Unlawful Disclosure of Their PHI and Other Sensitive PII

125. Businesses have been built around the collection of personal data as “data is widely considered to be among the world’s most valuable resources” because of the potential revenue and business value it can provide. Personal data has been recognized as “a valuable commodity, similar to commodities like oil and gold.”⁷³

126. The Federal Trade Commission (“FTC”) has identified data collected about a person’s precise location and information about their health as the most sensitive categories of data collected. Standing alone, these data points “pose an incalculable risk to personal privacy,” but when technology companies collect the data, combine it and sell or monetize it, this amounts to an “unprecedented intrusion” and creates a “new frontier of potential harms to consumers.”⁷⁴

127. For example, the FTC recently settled a lawsuit against Flo Health, alleging that the company shared sensitive health information with Google and Meta collected from its period and fertility tracking app, despite promising to keep this information private. The FTC warns that the misuse of such health information, including reproductive health data, exposes consumers to significant harm because: (i) criminals can use the health data to facilitate phishing scams or commit identity theft; (ii) stalkers or other criminals can use the data to inflict physical and emotional injury; and (iii) the exposure of health information and medical conditions can subject people to discrimination, stigma, mental anguish and other serious harms.⁷⁵

⁷³ See Cherukuri, Vijay, *Data: The Most Valuable Commodity for Business*, KD Nuggets, Mar. 1, 2022, available at <https://www.kdnuggets.com/2022/03/data-valuable-commodity-businesses.html> (last accessed Aug. 1, 2023).

⁷⁴ See Location, *supra* footnote 9.

⁷⁵ *Id.*

1 128. Chris Bowen, the Chief Privacy and Security Officer for ClearData,
2 explained that health information is so valuable because “[y]ou can build [an] entire
3 human persona around a health record. You can create or seek medical treatment,
4 abuse drugs, or get prescriptions.”⁷⁶ This is part of the reason why healthcare data
5 may be valued at up to \$250 per record on the black market.⁷⁷

6 129. However, personal data is not just valuable to criminals. It is common
7 knowledge that there is an economic market for consumers’ personal data, including
8 the PHI and other sensitive PII Planned Parenthood collects from Plaintiff and other
9 class members.

10 130. Healthcare providers, such as Planned Parenthood, “sit on treasure
11 troves: a stockpile of patient health data stored as electronic medical records.”⁷⁸ These
12 “files show what people are sick with, how they were treated, and what happened
13 next.”⁷⁹ Taken together, “they’re hugely valuable resources for medical discovery.”⁸⁰

14 131. Even when healthcare providers de-identify records by removing
15 identifying information such as names, locations and phone numbers, healthcare
16 providers can still sell the data to partners for research.

17 132. Unsurprisingly, healthcare groups have taken advantage of de-
18 identifying medical records. For instance, the Mayo Clinic in Rochester, Minnesota is
19

20
21 ⁷⁶ Maddox, Will, *Why Medical Data is 50 Times More Valuable Than a Credit Card*,
22 DMagazine, Oct. 15, 2019, available at <https://www.dmagazine.com/healthcare-business/2019/10/why-medical-data-is-50-times-more-valuable-than-a-credit-card/>
23 (last accessed Aug. 1, 2023).

24 ⁷⁷ Hackers, Breaches, and the Value of Healthcare Data, imprivata, June 30, 2021,
25 available at <https://www.imprivata.com/blog/healthcare-data-new-prize-hackers>
26 (last accessed Aug. 1, 2023).

27 ⁷⁸ Westman, Nicole, *Hospitals are selling treasure troves of medical data – what could
28 go wrong?*, The Verge, June 23, 2021, available at <https://www.theverge.com/2021/6/23/22547397/medical-records-health-data-hospitals-research> (last accessed Aug. 1,
2023).

⁷⁹ *Id.*

⁸⁰ *Id.*

1 working with a startup company to develop algorithms in order to diagnose and
2 manage conditions based on health data.⁸¹

3 133. Given the significant monetary value of PHI, Planned Parenthood has
4 deprived Plaintiff and the class members of the economic value of their PHI by
5 acquiring and disclosing such data without providing proper consideration for their
6 property.

7 **VIII. Plaintiff Davina Gibson's Experience with the Website**

8 134. Davina Gibson is an adult California resident and visited Planned
9 Parenthood's Website on numerous occasions over the one year prior to filing this
10 action.

11 135. She first started using the Website in 2016, and she has used it as
12 recently as July 2023.

13 136. She has used the Website for Women's Services and other personal
14 healthcare during the relevant time period, including to schedule appointments and
15 research Women's Services and other healthcare information.

16 137. As part of obtaining Women's Services from Planned Parenthood, she
17 receives various communications from Planned Parenthood including by phone call,
18 text message and email. She has also seen advertisements for Planned Parenthood
19 while residing in California, and it is always one of the first names to appear when
20 conducting an Internet search on a browser via a search engine, like Google, for sexual
21 and reproductive healthcare services in California.

22 138. Ms. Gibson has also used the search bar on the Website during the
23 relevant time period searching for information and appointments related to Women's
24 Services and other healthcare.

25 139. She primarily accesses and uses the Website on a browser through her
26 cellphone.

27
28 ⁸¹ *Id.*

1 140. Over the past year, Ms. Gibson conveyed significant healthcare and other
2 personal information on the Website, including research related to Women's Services,
3 when and where she schedules appointments for Women's Services, the types of
4 medical treatment she seeks through Planned Parenthood, the specialty and names
5 of the providers with whom she seeks treatment with, the locations of the Planned
6 Parenthood facilities she wishes to go to and prescriptions she researches, seeks and
7 is provided. She also has simultaneously communicated considerable PII alongside
8 this information, including, but not limited to, her IP address and FID.

9 141. While using the Website, including to research and schedule
10 appointments, Ms. Gibson not only never agreed or consented to Planned Parenthood's
11 Privacy Policy or Terms of Service, but she never even saw its Privacy Policy or Terms
12 of Service. She also never consented in any way to the disclosure of her PHI and other
13 PII that revealed her identity.

14 142. Unbeknownst to Ms. Gibson, Planned Parenthood allowed the Third
15 Parties to have real-time access to her communications on the Website because she
16 accessed the Website, embedded with all of the Tracking Codes, on various web
17 browsers on her mobile phone and computer.

18 143. The Third Parties utilized this access to surreptitiously gather Ms.
19 Gibson's sensitive PHI, which includes information related to Women's Services, and
20 other PII. This information taken together reveals her specific identity and specific
21 communications on the Website to the Third Parties.

22 144. Ms. Gibson did not consent to the disclosure or interception of her
23 electronic communications with Planned Parenthood to the Third Parties, and she
24 never provided a signed authorization for the release of her medical information.

25 145. Ms. Gibson never visited the Third Parties' websites to review their
26 separate terms of use and/or privacy policies because she was unaware that Planned
27 Parenthood shared her PHI and other sensitive PII that revealed her identity with the
28

1 Third Parties. She was not even aware that the Tracking Codes were embedded on
2 the Website.

3 146. Ms. Gibson provided her PHI and other sensitive PII with the reasonable
4 expectation that Planned Parenthood is prohibited from disclosing it as a covered
5 entity under HIPAA, in addition to the express and implied assurances of
6 confidentiality it makes on its Website.

7 147. When she accessed the Website, the Third Parties collected her PHI and
8 other sensitive PII from Planned Parenthood and had already collected some or all of
9 her personal information from other websites in their wiretap networks.

10 148. Thus, the Third Parties were able to link Ms. Gibson's previous browsing
11 activity on other websites with her intercepted activity on the Website, revealing and
12 connecting an enormous amount of private information about herself.

13 149. As a result, the Third Parties used her unlawfully collected data to
14 improve their own products, services and algorithms, and the Third Parties
15 improperly viewed and used her PHI and other sensitive PII in connection with
16 targeted marketing to bolster profits.

17 150. In order to receive the best care from Planned Parenthood and its
18 healthcare providers, Ms. Gibson is required to use the Website because it is the only
19 centralized location where she can research the various treatment options and
20 providers offered by Planned Parenthood and book appointments related to her
21 specific healthcare needs, including for Women's Services.

22 151. Ms. Gibson has never donated to Planned Parenthood.

23 152. Ms. Gibson has had a Facebook account since 2018, which she uses every
24 day. She does not explicitly log out of Facebook when she is done using it.

25 **TOLLING, CONCEALMENT AND ESTOPPEL**

26 153. The applicable statutes of limitation have been tolled as a result of
27 Planned Parenthood's knowing and active concealment and denial of the facts alleged
28 herein.

1 154. Planned Parenthood has secretly incorporated the Tracking Codes into
2 its Website, providing no indication to Website users researching healthcare and
3 scheduling appointments that they were interacting with a Website that shares their
4 data, which includes highly private and personal sexual and reproductive health
5 information and other sensitive PII that reveals their specific identity, with the Third
6 Parties.

7 155. Planned Parenthood had exclusive knowledge that its Website
8 incorporated all of the Tracking Codes, yet it failed to disclose that fact to its Website
9 users. It also failed to properly disclose to Plaintiff and class members that by
10 interacting with the Website, their PHI, including private and personal sexual and
11 reproductive health information, and other sensitive PII would be disclosed to and
12 intercepted by the Third Parties, revealing not only their identity but also a significant
13 amount of healthcare information about themselves.

14 156. Plaintiff and class members could not with due diligence have discovered
15 the full scope of Planned Parenthood's and the Third Parties' conduct because it is
16 highly technical and there were no disclosures or other indications that would inform
17 a reasonable consumer that Planned Parenthood was disclosing, and assisting the
18 Third Parties in intercepting, their Website users' PHI and other sensitive PII from
19 the Website.

20 157. The earliest Plaintiff and class members could have known about
21 Planned Parenthood's conduct was shortly before the filing of this Complaint.

22 158. Planned Parenthood was under a duty to disclose the nature and
23 significance of its data collection practices but did not do so. It is therefore estopped
24 from relying on any statute of limitations under the discovery rule.

25 159. Additionally, Planned Parenthood engaged in fraudulent conduct to
26 prevent Plaintiff and class members from discovering the disclosure and interception
27 of their PHI and other sensitive PII. Planned Parenthood misled Plaintiff and class
28 members to believe their data, which includes incredibly private and personal sexual

1 and reproductive health information as well as PII revealing their identity, would not
2 be disclosed or intercepted.

3 160. Plaintiff and class members were not aware that Planned Parenthood
4 disclosed and assisted in the interception of their data, which includes PHI and other
5 sensitive PII that revealed their identities.

6 161. Plaintiff and class members exercised due diligence to uncover the facts
7 alleged herein and did not have actual or constructive knowledge of Planned
8 Parenthood's misconduct by virtue of its fraudulent concealment.

9 162. Accordingly, all statutes of limitation are tolled under the doctrine of
10 fraudulent concealment.

11 CLASS ALLEGATIONS

12 163. Plaintiff brings this action both on behalf of herself and all others
13 similarly situated (the "Class") pursuant to Federal Rules of Civil Procedure 23(a),
14 (b)(2) and (b)(3). The Class is defined as follows:

15 All natural persons who, during the class period, used the Planned
16 Parenthood Website in California and had their private medical
17 information or other sensitive personal or personally identifiable
information unlawfully disclosed to third parties.

18 Specifically excluded from this Class are Defendant, its officers,
19 directors or employees, any entity in which Defendant has a
20 controlling interest and any affiliate, legal representative, heir or
assign of Defendant. Also excluded from this Class are any judicial
officers presiding over this action, the members of the judicial officer's
immediate family and staff and any juror assigned to this action.

21 164. Certification of Plaintiff's claims for class-wide treatment is appropriate
22 because Plaintiff can prove the elements of her claims on a class-wide basis using the
23 same evidence as would be used to prove those elements in individual actions alleging
24 the same claims.

25 165. Class Identity: The Class is readily identifiable and one for which
26 adequate records exist.

27 166. Numerosity: The members of the Class are so numerous that their
28 individual joinder is impractical, and the Class is reasonably believed to include

hundreds of thousands of persons. Further, the size and relatively modest value of the claims of individual Class members renders joinder impractical. The precise number or identification of Class members is presently unknown to Plaintiff but may be ascertained from Planned Parenthood's and third parties' records. Class members may be notified of the pendency of this action by mail, email, Internet postings and publication.

167. Typicality: Plaintiff's claims are typical of the claims of the Class members because Plaintiff is an individual who had her PHI and other sensitive PII unlawfully disclosed, collected, captured, received or otherwise obtained and/or used and stored by various third parties without her knowledge or consent. Plaintiff's claims arise from the same common course of conduct, give rise to the same claims of injury and seek the same relief as those of the other Class members.

168. Common Questions Predominate: Questions of law and fact common to the Class, which generate common answers, include, but are not limited to:

- a. Whether Planned Parenthood's Terms of Use and/or Privacy Policy applies to Plaintiff and Class members;
- b. Whether Planned Parenthood provided adequate and proper notice to Plaintiff and Class members that it discloses their PHI and other sensitive PII that reveals their identity;
- c. Whether Planned Parenthood received the required consent from Plaintiff and Class members needed in order to disclose their PHI and other sensitive PII that reveals their identity; and
- d. Whether Plaintiff and Class members are entitled to damages under CIPA, CMIA or any other relevant statute.

169. These and other questions of law and fact common to all members of the Class predominate over questions affecting only individual members of the Class.

170. Adequacy: Plaintiff will fairly and adequately protect the interests of the Class because Plaintiff's interests are aligned with, and are not antagonistic to, those of the other Class members. Plaintiff has retained counsel competent and experienced

1 in the prosecution of complex and class action litigation to represent herself and the
2 Class.

3 171. Superiority: A class action is superior to other available methods for the
4 fair and efficient adjudication of this controversy for the following reasons: (i)
5 individual joinder of all Class members is impractical; (ii) prosecution as a class action
6 will eliminate the possibility of duplicative litigation; (iii) prosecution of separate
7 actions by individual Class members would create the risk of inconsistent or varying
8 decisions and adjudications, creating uncertain and potentially incompatible
9 standards for adjudicating the claims and defenses asserted in this action; (iv) the
10 relatively small amount of damages suffered by individual Class members, when
11 compared to the expense and burden of individual prosecution of their individual
12 claims, preclude feasible and practical individual actions to seek redress for the
13 violations alleged; and (v) individual litigation would greatly magnify the delay and
14 expense to all parties and to the court system. For these reasons, a class action will
15 reduce case management difficulties and provide the benefits of unitary adjudication,
16 economy of scale and comprehensive supervision by a single court.

17 172. In addition, Planned Parenthood has acted on grounds generally
18 applicable to the Class, making final injunctive relief appropriate for the Class as a
19 whole.

20 **CALIFORNIA LAW APPLIES TO THE ENTIRE CLASS**

21 173. California substantive law applies to Plaintiff and every member of the
22 Class. California's substantive laws may be constitutionally applied to the claims of
23 Plaintiff and the other members of the Class under the Due Process Clause, 14th
24 Amend. § 1 and the Full Faith and Credit Clause, Art. IV § of the United States
25 Constitution.

26 174. California has significant contacts, or significant aggregation of contacts,
27 to the claims asserted by Plaintiff and Class members, thereby creating state interests
28 to ensure that the choice of California state law is not arbitrary or unfair.

175. As aforementioned, Planned Parenthood conducts substantial business in California such that California has an interest in regulating Planned Parenthood's conduct under its laws.

176. The application of California laws to the Class is also appropriate under California's choice of law rules because California has significant contacts to the claims of Plaintiff and the proposed Class, and California has a greater interest than any other interested state in applying its laws here given Planned Parenthood's facilities throughout California and the location of the conduct at issue.

COUNT I

Violation of the California Invasion of Privacy Act

Cal. Penal Code § 631

(On Behalf of Plaintiff and the Class)

177. Plaintiff repeats the allegations contained in the paragraphs above as if fully set forth herein and brings this count individually and on behalf of the members of the Class.

178. The CIPA is codified at Cal. Penal Code §§ 630 to 638. CIPA begins with its statement of purpose that it is to "protect the right of privacy of the people of [California]" from the threat posed by "advances in science and technology [that] have led to the development of new devices and techniques for the purpose of eavesdropping upon private communications." Cal. Penal Code § 630.

179. Cal. Penal Code § 631 imposes liability on any person who "by means of any machine, instrument, contrivance, or in any other manner":

- (1) "intentionally taps, or makes any unauthorized connection . . . with any telegraph or telephone wire, line, cable, or instrument, including the wire, line, cable, or instrument;"
- (2) "willfully and without the consent of all parties to the communication, or in any unauthorized manner, reads, or attempts to read, or to learn the contents or meaning of any message, report, or communication while the same is in transit or passing over any wire, line, or cable, or is being sent from, or received at any place within [the state of California];"

(3) “uses, or attempts to use, in any manner, or for any purpose, or to communicate in any way, any information so obtained;” or

(4) “aids, agrees with, employs, or conspires with any person or persons to unlawfully do, or permit, or cause to be done any of the acts of things mentioned above in this section.”

Cal. Penal Code § 631(a).

180. Planned Parenthood is a person for purposes of Cal. Penal Code § 631.

181. To avoid liability under Cal. Penal Code § 631(a), a defendant must show it had the consent of *all* parties to a communication.

182. At all relevant times, Planned Parenthood intentionally tapped or made an unauthorized connection with respect to Plaintiff’s and Class members’ communications on its Website, which include PHI and other sensitive PII, by placing various Tracking Codes on its Website without the authorization and consent of Plaintiff and the Class members, thereby violating CIPA. Planned Parenthood intentionally procured the Tracking Codes from the Third Parties and embedded and installed them on its Website.

183. At all relevant times, Planned Parenthood also aided, agreed with and conspired with the Third Parties to track and intercept Plaintiff’s and Class members’ PHI and other sensitive PII while they accessed the Website. These communications were intercepted without the authorization and consent of Plaintiff and Class members, thereby violating CIPA.

184. Planned Parenthood, when aiding and assisting the Third Parties’ wiretapping of its Website users’ communications and interactions on its Website, intended to provide benefit to the Third Parties and for the Third Parties to learn some meaning of the content intercepted.

185. Section 631(a)’s applicability is not limited to phone lines but also applies to “new technologies” such as computers, the Internet and email. *See Matera v. Google Inc.*, 2016 WL 8200619, at *21 (N.D. Cal. Aug. 12, 2016) (CIPA applies to “new technologies” and must be construed broadly to effectuate its remedial purpose of protecting privacy); *Bradley v. Google, Inc.*, 2006 WL 3798134, at *5-6 (N.D. Cal. Dec.

22, 2006) (CIPA governs “electronic communications”); *In re Facebook, Inc. Internet Tracking Litigation*, 956 F.3d 589 (9th Cir. 2020) (reversing dismissal of CIPA and common law privacy claims based on Facebook’s collection of consumers’ internet browsing history).

186. The following items constitute “machine[s], instrument[s], or contrivance[s]” under the CIPA, and even if they do not, which Plaintiff denies, the Tracking Codes fall under the broad catch-all category of “any other manner”:

- i. The computer codes and programs the Third Parties use to track Plaintiff’s and Class members’ interactions and communications while they navigate the Website;
- ii. Plaintiff’s and Class members’ browsers;
- iii. Plaintiff’s and Class members’ computing and mobile devices;
- iv. Third Parties’ web and advertisement servers; and
- v. The plans the Third Parties carried out to effectuate their tracking and interception of Plaintiff’s and Class members’ communications while they were using a web browser or mobile application to access the Website.

187. The healthcare communication information that Planned Parenthood transmitted using the Tracking Codes, such as personal sexual and reproductive health and doctor appointment booking information, constituted PHI. Website users also communicate significant PII on the Website that Planned Parenthood simultaneously transmitted using the Tracking Codes. Taken together, the Third Parties can use the information that Planned Parenthood unlawfully discloses to it to identify a specific person and their actions and communications on the Website.

188. Planned Parenthood facilitated the interception and simultaneous transmission to the Third Parties and others of Plaintiff’s and Class members’ PHI and other sensitive PII while the information was “in transit” and in real time. As a result of the Tracking Codes Planned Parenthood embedded on its Website, when users interacted with the Website, their communications were simultaneously

1 redirected to the Third Parties while they were still on their way to Planned
2 Parenthood.

3 189. The information communicated between Plaintiff and Class members,
4 Planned Parenthood and the Third Parties was transmitted to and/or from the state
5 of California.

6 190. Redirection of data as a result of tracking coding before that data reaches
7 its originally intended recipient (here, Planned Parenthood) does not constitute a
8 separate communication for the purposes of exclusion from CIPA.

9 191. Planned Parenthood enabled non-parties to the communications to
10 “read” the communications for the purposes of CIPA. For example, the Third Parties
11 can see when individuals searched for doctors with particular specialties, what
12 conditions they researched, when and where they made appointments and
13 information they communicated related to Women’s Services and Men’s Services.

14 192. As demonstrated hereinabove, Planned Parenthood violated CIPA by:

- 15 (1) intentionally tapping or making an unauthorized connection
16 with respect to Plaintiff’s and Class members’ communications,
17 which include PHI and other sensitive PII, by placing various
Tracking Codes on its Website, all without their Website users’
authorization or consent; and
- 18 (2) aiding and permitting the Third Parties to receive its Website
19 users’ interactions and communications on the Website without
their authorization or consent.

20 *See* Cal. Penal Code § 631.

21 193. Cal. Penal Code § 637.2(a) provides:

22 Any person who has been injured by a violation of this chapter
23 [including Penal Code § 631] may bring an action against the
24 person who committed the violation for the greater of the following
amounts:

- 25 (1) Five thousand dollars (\$5,000) per violation;
- 26 (2) Three times the amount of actual damages, if any,
27 sustained by the plaintiff.

1 201. Plaintiff's and Class members' communications to and with Planned
2 Parenthood on its Website, which includes PHI, including information about sexual
3 and reproductive healthcare symptoms, conditions and prescriptions, and other
4 sensitive PII that reveals a person's identity were confidential communications for
5 purposes of Cal. Penal Code § 632 because Plaintiff and Class members had an
6 objectively reasonable expectation of privacy in this data.

7 202. The Tracking Codes are all electronic amplifying or recording devices for
8 purposes of Cal. Penal Code § 632.

9 203. At all relevant times, Planned Parenthood intentionally used the
10 Tracking Codes on its Website to record the confidential communications of Plaintiff
11 and Class members in violation of Cal. Penal Code § 632.

12 204. Planned Parenthood intentionally procured the Tracking Codes from the
13 Third Parties and embedded and installed them on its Website, and as a result,
14 facilitated the interception and simultaneous transmission to the Third Parties and
15 others of Plaintiff's and Class members' PHI and other sensitive PII while the
16 information was "in transit" and in real time. The Third Parties use the information
17 that Planned Parenthood unlawfully discloses to it in order to identify specific people
18 and their communications on the Website and for their own benefit.

19 205. Plaintiff and Class members did not consent to any of Planned
20 Parenthood's actions, nor has Plaintiff and Class members consented to Planned
21 Parenthood's intentional use of an electronic amplifying or recording device to
22 eavesdrop upon and record their confidential communications on the Website.

23 206. Cal. Penal Code § 637.2(a) provides:

24 Any person who has been injured by a violation of this chapter
25 [including Penal Code § 632] may bring an action against the
 person who committed the violation for the greater of the following
 amounts:

- 26 (1) Five thousand dollars (\$5,000) per violation;
27 (2) Three times the amount of actual damages, if any,
28 sustained by the plaintiff.

207. Cal. Penal Code § 637.2(b) provides that [a]ny person may . . . bring an action to enjoin and restrain any violation of this chapter, and may in the same action seek damages as provided by subdivision (a).”

208. Additionally, Cal. Penal Code § 637.2(c) states that “[it] is not a necessary prerequisite to an action pursuant to this section that the plaintiff has suffered, or be threatened with, actual damages.”

209. Therefore, Planned Parenthood is liable to Plaintiff and the Class members for, at a minimum, statutory damages of \$5,000 per violation.

210. Plaintiff and Class members are also entitled to injunctive relief, as they have suffered irreparable injury from the unauthorized acts discussed herein, as their PHI, which includes personal sexual and reproductive health information, and other sensitive PII has been collected, viewed, accessed, used and stored and poses an ongoing risk and threat of injury.

COUNT III

Violation of the California Confidentiality of Medical Information Act

Cal. Civ. Code § 56, et seq.

(On Behalf of Plaintiff and the Class)

211. Plaintiff repeats the allegations contained in the foregoing paragraphs as if fully set forth herein and brings this claim individually and on behalf of the proposed Class.

212. Under the CMIA, a “provider of health care . . . shall not disclose medical information regarding a patient of the provider of health care . . . without first obtaining an authorization, except as provided in subdivision (b) or (c).” Cal. Civ. Code § 56.10(a).⁸²

⁸² Subdivisions (b) and (c) are not relevant to this case but permit the disclosure of medical information in situations where a government investigation or lawsuit is taking place. For example, Defendant could bypass the authorization requirement if patient medical information was requested pursuant to a lawful court order or by a party to a proceeding before a court or administrative agency pursuant to a subpoena. See Cal. Civ. Code §§ 56.10(b)(3) and 56.10(b)(6).

213. Planned Parenthood is a provider of healthcare under Cal. Civ. Code §§ 56.05(o) and 56.06 (a)-(b) because Plaintiff Parenthood is a health facility licensed pursuant to Division 2 of the Health and Safety Code, maintains medical information and offers software to consumers that is designed to maintain medical information for the purposes of allowing its Website users to manage their information or make the information available to a healthcare provider, or for the diagnoses, treatment or management of a medical condition.

214. Plaintiff and Class members are patients within the meaning of Cal. Civ. Code § 56.05(l).

215. Cal. Civ. Code § 56.101(a) requires that every provider of healthcare “who creates, maintains, preserves, stores, abandons, destroys, or disposes of medical information shall do so in a manner that preserves the confidentiality of the information contained therein.”

216. Any healthcare provider who “negligently creates, maintains, preserves, stores, abandons, destroys, or disposes of medical information shall be subject to remedies and penalties provided under subdivisions (b) and (c) of Section 56.36[.]” Cal. Civ. Code § 56.101(a).

217. At all relevant times, Planned Parenthood obtained medical information from its Website users through its Website.

218. Planned Parenthood is therefore subject to the requirements of the CMIA and obligated under Cal. Civ. Code § 56.06(e) to maintain the same standards of confidentiality required of a provider of healthcare with respect to medical information that it maintains on behalf of users

219. The CMIA defines medical information as:

[A]ny individually identifiable information, in electronic or physical form, in possession of or derived from a provider of health care, health care service plan, pharmaceutical company, or contractor regarding a patient’s medical history, mental or physical condition, or treatment. “Individually identifiable” means that the medical information includes or contains any element of personal identifying information sufficient to allow identification of the individual, such as the patient’s name, address,

1 electronic mail address, telephone number, or social security number, or
2 other information that, alone or in combination with other publicly
available information, reveals the identity of the individual.

3 Cal. Civ. Code § 56.05(i).

4 220. The information Planned Parenthood maintained and unlawfully
5 disclosed to the Third Parties is individually identifiable because the medical
6 information disclosed and intercepted includes or contains *many* “element[s] of
7 personal identifying information sufficient to allow identification of the individual,”
8 including the Website user’s name, address, FID address, electronic mail address,
9 telephone number and other information that, alone or in combination with other
10 publicly available information, reveals the identity of the individual.

11 221. Further, the individually identifiable information Planned Parenthood
12 maintains in its possession and unlawfully discloses to the Third Parties is medical
13 information because it is individually identifiable information, often in electronic
14 form, relating to Website users’ medical histories, which includes sensitive and
15 personal Women’s Services and Men’s Services information, booking and appointment
16 history, past and current mental and physical conditions, treatments they have
17 researched, requested and received and prescriptions, including various forms of birth
18 control, they have researched, requested and received. Planned Parenthood requires
19 its Website users to convey their status throughout its platform.

20 222. The Tracking Codes made possible the linking of a Website user, their
21 medical information and their identity. The information exchanged, including the
22 contents of Website searches, the act and substance of making appointments with
23 doctors, information relating to Website users’ past and current medical histories,
24 which often includes sensitive and personal Women’s Services and Men’s Services
25 information, past and current mental and physical conditions, treatments and
26 prescriptions reveals information about Website users’ “physical condition or history.”

27 223. As a provider of healthcare, Planned Parenthood is required by CMIA to
28 ensure that medical information regarding Website users is not disclosed,

disseminated or released without their authorization and to protect and preserve the confidentiality of the medical information regarding a Website user under Cal. Civ. Code §§ 56.10, 56.13, 56.245, 56.26, 56.101 and 56.36.

224. “An authorization for the release of medical information . . . shall be valid if it:

- i. Is handwritten by the person who signs it or is in a typeface no smaller than 14-point type;
- ii. Is clearly separate from any other language present on the same page and is executed by a signature which serves no other purpose than to execute the authorization;
- iii. Is signed and dated . . . ;
- iv. States the specific uses and limitations on the types of medical information to be disclosed;
- v. States the name or functions of the provider of health care, health care service plan, pharmaceutical company or contractor that may disclose the medical information;
- vi. States the name or functions of the persons or entities authorized to receive the medical information;
- vii. States the specific uses and limitations on the use of the medical information by the persons or entities authorized to receive the medical information;
- viii. States a specific date after which the provider of health care, health care service plan, pharmaceutical company or contractor is no longer authorized to disclose the medical information; and
- ix. Advises the person signing the authorization of the right to receive a copy of the authorization.”

Cal. Civ. Code § 56.11.

225. As a provider of healthcare, Planned Parenthood is required by the CMIA to create, maintain, preserve and store medical records in a manner that preserves the confidentiality of the information contained therein under Cal. Civ. Code § 56.101.

226. At all relevant times, Planned Parenthood maintains medical information.

227. Plaintiff and Class members provided their medical information, which is often very personalized, to Planned Parenthood.

1 228. As a result of the Tracking Codes installed or embedded on its Website,
2 Planned Parenthood has released, disclosed and/or negligently allowed the Third
3 Parties to access and view Plaintiff's and Class members' medical information without
4 their written authorization. After the disclosure of the medical information, the Third
5 Parties improperly viewed or otherwise accessed this information. Not only did
6 Planned Parenthood unlawfully disclose its Website users' medical information, but
7 they disclosed their highly sensitive personal and private sexual and reproductive
8 healthcare information.

9 229. The Third Parties, all whose primary business includes selling
10 advertisements, analytics or other insights based on the data they obtain about
11 individuals, used the data to improve their products, services and algorithms.
12 Specifically, the Third Parties improperly viewed and used the Plaintiff's and Class
13 members' medical information in connection with targeted marketing.

14 230. As a further result of Planned Parenthood's actions, the confidential
15 nature of Plaintiff's and Class members' medical information was breached due to
16 Planned Parenthood, as it failed to maintain, preserve and store medical information
17 in a manner that preserves the confidentiality of the information contained therein
18 because it disclosed to the Third Parties Plaintiff's and Class members' medical
19 information.

20 231. Planned Parenthood's release and/or disclosure of medical information
21 regarding Plaintiff and the Class members constitutes a violation of Cal. Civ. Code §§
22 56.06, 56.10, 56.11, 56.13, 56.26, 56.36, 56.101 and 56.245.

23 232. By disclosing Plaintiff's and Class members' medical information without
24 their written authorization, Planned Parenthood violated the CMIA and its legal duty
25 to protect the confidentiality of such information.

26 233. Planned Parenthood knowingly and willfully disclosed Plaintiff's and
27 Class members' medical information without consent to the Third Parties for financial
28 gain, including to sell more products, advertise, obtain analytics and improve its

Website, all in violation of the CMIA. Planned Parenthood's conduct was knowing and willful as it was aware that the Third Parties would obtain all of its Website users' actions and data input while using its Website, yet they still intentionally embedded the Third Parties' code on its Website anyways.

234. At the very least, Planned Parenthood negligently disclosed medical information to the Third Parties in violation of the CMIA. A healthcare provider that maintains information for purposes covered by the CMIA is liable for negligent disclosures that arise as the result of an affirmative act, such as implementing a system that records and discloses online Website users' sensitive and protected sexual and reproductive health information and personally identifiable information.

235. As a direct and proximate result of Planned Parenthood's wrongful actions, inaction, omissions and want of ordinary care that directly and proximately caused its violations of the CMIA, Plaintiff and Class members are entitled to and hereby seek:

- i. Nominal damages of \$1,000 for each violation under Cal. Civ. Code § 56.36(b)(1);
- ii. Actual damages, in an amount to be determined at trial, for each violation under Cal. Civ. Code § 56.36(b)(2);
- iii. Punitive damages not to exceed \$3,000 for each violation under Cal. Civ. Code § 56.35; and
- iv. Reasonable attorneys' fees and other litigation costs and expenses incurred under Cal. Civ. Code § 56.35.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and the Proposed Class, respectfully prays for relief and judgment as follows:

- A. For a determination that this action is a proper class action;
- B. For an order certifying the Class, naming Plaintiff as representative of the Class and naming Plaintiff's attorneys as Class Counsel to represent the Class;
- C. For an order declaring that Planned Parenthood's conduct violated the statutes referenced herein;

1 D. For an order finding in favor of Plaintiff and the Class members on all
2 counts asserted herein;

3 E. For an award of compensatory damages, including statutory damages
4 where available, to Plaintiff and the Class members against Planned Parenthood for
5 all damages sustained as a result of Planned Parenthood's wrongdoing, in an amount
6 to be proven at trial;

7 F. For punitive damages, as warranted, in an amount to be determined at
8 trial;

9 G. Ordering Defendant to disgorge revenues and benefits wrongfully
10 obtained;

11 H. For prejudgment interest on all amounts awarded;

12 I. For injunctive relief as pleaded or as the Court may deem proper;

13 J. For an order awarding Plaintiff and the Class members their reasonable
14 attorneys' fees and expenses and costs of suit; and

15 K. For an order granting Plaintiff and Class members such further relief as
16 the Court deems appropriate.

17 **JURY DEMAND**

18 Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by
19 jury of all of the claims asserted in this Complaint so triable.

20 Dated: September 1, 2023

BENBROOK LAW GROUP, PC

21
22 By s/ Bradley A. Benbrook
23 BRADLEY A. BENBROOK
24 Attorneys for Plaintiff and the Class
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